

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 EUGENE DIVISION

4 ELIZABETH HUNTER, et al.,)

5 Plaintiffs,)

6 v.)

7 U.S. DEPARTMENT OF EDUCATION,)
8 et al.,)

9 Defendants.)

10 v.)

11 COUNCIL FOR CHRISTIAN)
12 COLLEGES & UNIVERSITIES,)
13 WESTERN BAPTIST COLLEGE d/b/a)
14 CORBAN UNIVERSITY, WILLIAM)
JESSUP UNIVERSITY, AND)
PHOENIX SEMINARY,)

15 Defendants-Intervenors.)
16
17
18

19 PRELIMINARY INJUNCTION HEARING

20 VOLUME 3

21 TRANSCRIPT OF PROCEEDINGS

22 BEFORE THE HONORABLE ANN L. AIKEN

23 UNITED STATES DISTRICT COURT JUDGE
24
25

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1 THE COURTROOM DEPUTY: Now's the time set for Civil
2 Case No. 21-474, Hunter, et al. v. U.S. Department of
3 Education, et al., for preliminary injunction hearing. If you
4 could please introduce yourselves for the record, beginning
5 with Plaintiffs.

6 MR. SOUTHWICK: Paul Southwick and Joseph Baxter for
7 the Plaintiffs.

8 MS. SNYDER: Hilarie Snyder and Elliott Davis for the
9 Government Defendants.

10 MR. SCHAERR: Gene Schaerr for the CCCU Intervenor.
11 And I'm here with Joshua Prince. And I think Nicholas Miller
12 will be joining us later.

13 MR. TUCKER: And Ryan Tucker on behalf of the
14 Religious School Intervenors.

15 THE COURT: It sounds like we have pretty decent
16 connections today. So I'm going to keep my fingers crossed
17 we're not going to have some of the difficulties we had on
18 Friday. We have the -- your witness for the Government --
19 Mr. Willis (sic) -- is he -- there he is. If he could just say
20 his name.

21 THE WITNESS: Wills.

22 THE COURT: Wills -- I'm sorry. Mr. Wills, I wanted
23 to make sure you popped up. I would remind you you're still
24 under oath, and we'll continue. Go ahead.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Sure.

2 MS. SNYDER: Thank you, Your Honor.

3

4 R-A-N-D-O-L-P-H W-I-L-L-S,

5 having been previously sworn, testified as follows:

6

7 DIRECT EXAMINATION (Continued)

8 BY MS. SNYDER:

9 Q Mr. Wills, do you recall speaking on Friday about the
10 process OCR Enforcement uses to evaluate, investigate, and
11 resolve administrative complaints of discrimination?

12 A Yes, I do.

13 Q Do you also recall speaking on Friday about how an
14 assurance of religious exemption letter may impact that
15 process?

16 A Yes, I do.

17 Q I'd like to now turn your attention to the Plaintiffs in
18 this case. You are aware that Plaintiffs, or someone on their
19 behalf, filed administrative complaints with OCR alleging
20 violations of Title IX; correct?

21 A Yes, I'm aware of that.

22 Q Could you please look at Government Defendant's Exhibit 3
23 in the binder in front of you?

24 MS. SNYDER: And, Beth, if you could call that up,
25 please.

1 BY MS. SNYDER:

2 Q Could you identify Exhibit 3, please?

3 A Yes. Exhibit 3 is a chart listing complaints filed -- 36
4 complaints that have been filed recently with OCR. It provides
5 a description of the status of those complaints and also
6 indicates that the complainants or the individuals filing on
7 complainants' behalf are Plaintiffs in the current action in
8 front of the Court.

9 Q Okay. And who compiled Exhibit 3?

10 A Exhibit 3 was compiled by Melanie Velez, who is an acting
11 enforcement director in OCR.

12 Q And does Exhibit 3 summarize records in OCR's possession?

13 A Yes, it does.

14 Q Do you see on the first page -- what is Column No. 1?

15 A Column No. 1 lists the docket number assigned to the
16 individual case. This is OCR's docket number.

17 Q And does Column No. 1 accurately reflect docket numbers as
18 of Friday's date?

19 A Yes, it does.

20 Q If you could please, what is Column 2?

21 A Column 2 includes the name of the recipient educational
22 institution that was raised in the complaint.

23 Q And does Column 2 accurately reflect docket numbers as of
24 Friday's date?

25 A Yes, it does.

1 Q If you could, please, what is Column 3?

2 A Column 3 indicates the date that each complaint was
3 received by OCR.

4 Q And is that column accurate as of Friday's date?

5 A Yes, it is.

6 Q Could you please explain what Column 4 is?

7 A Column 4 indicates the stage in OCR's processing that each
8 complaint is currently in.

9 Q And is Column 4 accurate as of Friday's date?

10 A Yes, it is.

11 Q Could you please explain what Column 5 is?

12 A Column 5 indicates the OCR regional office to which these
13 complaints -- these various complaints -- are assigned.

14 Q And is Column 5 accurate as of Friday's date?

15 A Yes, it is.

16 Q Could you please explain what Column 6 references?

17 A Column 6 references the name of the plaintiff in the
18 instant action who is also involved as the complainant in the
19 OCR administrative action.

20 Q And does Column 6 accurately reflect that information as
21 of Friday's date?

22 A Yes, it does.

23 Q Okay. If you could, please, look at the next column,
24 Column 7. Could you identify what Column 7 is?

25 A Column 7 indicates whether the complainant in the OCR

1 administrative action has requested a 180-day waiver, and it
2 also indicates the status of that waiver.

3 Q Now, you spoke on Friday a little about waivers and
4 timeliness. Could you explain to the Court what a 180-day
5 waiver request is?

6 A A 180-day waiver request is a request to literally waive
7 OCR's timeliness requirement. You may recall that I testified
8 that OCR requires that complaints be filed within 180 days of
9 the last alleged act of discrimination. When that is not the
10 case, OCR provides, under certain conditions, for granting a
11 waiver of that timeliness requirement so that the case can
12 still move forward to investigation if that is appropriate.

13 Q Okay. And so Column 7 then reflects whether or not a
14 particular complainant filed a waiver request; is that correct?

15 A Yes, it does.

16 Q And does it reflect the status of that waiver request?

17 A It does.

18 Q And is Column 7 accurate as of Friday's date?

19 A Yes, it is.

20 Q If you could, please, look at Column 8. Could you
21 describe for the Court what that column is?

22 A Column 8 includes entries with regard to any communication
23 or interaction that OCR has had with the complainant, slash,
24 Plaintiffs in the administrative action.

25 Q And is Column 8 accurate as of Friday's date?

1 A Yes, it is.

2 Q Sorry. Is it accurate as of Friday's date? Does it
3 include all the communications through Friday?

4 A I'm sorry. This does not include -- no. This column
5 actually is accurate as of -- immediately prior to my
6 deposition. Since then there have been further actions taken
7 by OCR that are not reflected here.

8 Q Okay. So -- and your deposition was when so the Court
9 knows?

10 A My deposition was on October 21.

11 Q Okay. So that column is accurate as of approximately
12 October -- or, excuse me -- as of approximately October 21st;
13 is that correct?

14 A That's correct.

15 Q Okay. Is there any other edits or problems with that --
16 the accuracy of that column?

17 A Yes. There was -- the column, as of October 21st,
18 included an entry by the Dallas office that was incorrect. And
19 that has been corrected.

20 Q Okay. So this chart reflects, then, the correct status of
21 communications with -- and interactions -- with the complainant
22 or Plaintiffs through approximately October 21st; correct?

23 A That's correct.

24 Q And is your understanding that, in some instances,
25 additional communications have been made subsequent to

1 October 21st.

2 A That is my understanding.

3 Q Okay. Let's talk a little bit more specifically about the
4 fourth column that says "stage."

5 A Yes.

6 Q What stage are Plaintiffs' administrative complaints in
7 with OCR?

8 A Plaintiffs' administrative complaints are in the
9 evaluation stage with OCR, with the exception of one complaint
10 that has been dismissed.

11 Q Okay. So could you explain -- you said there's one
12 exception where a complaint has been dismissed. Could you
13 identify which complaint that is, please?

14 A Yes. That is Complaint Docket No. 08212212. It was a
15 complaint filed -- one of the complaints filed against Brigham
16 Young University.

17 Q And what is the status of that particular complaint?

18 A That complaint is currently closed because it has been
19 dismissed.

20 Q Do you know why it was dismissed?

21 A Yes. It was dismissed under one of the Case Processing
22 Manual provisions in Section 108, dismissed under Section
23 108(j), which provides that OCR must dismiss complaints where
24 OCR learns that a similar complaint has been filed -- a
25 complaint that was similar or identical allegations with same

1 operative facts have been filed in federal court or state
2 court. And here we have an example of a filing in federal
3 court. Which required the dismissal of this particular
4 complaint.

5 Q So with the exception of Brigham Young complaint that you
6 identified, what stage are the remaining administrative
7 complaints in?

8 A The remaining administrative complaints are in the
9 evaluation stage.

10 MS. SNYDER: Beth, you can take down that exhibit.

11 BY MS. SNYDER:

12 Q And could you just remind the Court, again, what the
13 evaluation stage means?

14 A The evaluation stage is the stage wherein OCR determines
15 whether to either dismiss a complaint or to go forward to open
16 an investigation. There are various considerations that OCR
17 undertakes at that stage in no particular order. We determine
18 whether we have subject-matter jurisdiction; personal
19 jurisdiction; whether the complaint is filed timely; and, if
20 not, whether a waiver has been requested, which, of course, it
21 would be up to OCR to determine whether to grant.

22 We also determine whether this is the type of complaint
23 that going forward would necessitate OCR having a signed
24 consent form from a complainant, which we use so that we can
25 actually reveal a certain amount -- a limited amount -- of

1 personal information to a recipient, once a complaint has been
2 opened, to enable that recipient to appropriately respond to
3 whatever the allegations are.

4 Q Is it accurate to say that the evaluation stage is the
5 first stage --

6 A Oh.

7 Q -- in OCR's process of considering an administrative
8 complaint?

9 A Absolutely.

10 Q You mentioned during your direct -- and I believe you
11 spoke a little bit about this -- that some changes were
12 implemented in September. Has OCR's process with respect to
13 Plaintiffs' complaints -- has that been impacted at all, as a
14 result of OCR's consideration of possible process changes
15 around September 2021?

16 A The changes that we implemented in mid-September were to
17 do with making sure we knew the complaints were filed with OCR;
18 and that regional offices reported that to headquarters; and
19 that, among other things, any action that the regional offices
20 proposed to take would actually have to come to headquarters
21 for review by headquarters and approval by the Assistant
22 Secretary.

23 Q And in considering whether or not to make those changes,
24 did that impact at all the timeline within which OCR is
25 considering Plaintiffs' administrative complaints?

1 A Those changes briefly impacted the timeline. Because at
2 one point, early in the process, we directed the regional
3 offices to pause any interviews that they were arranging or had
4 already arranged going forward until we actually had spent more
5 time in headquarters determining the best and appropriate way
6 to go forward. So there was a temporary pausing of interviews.
7 The pause has been lifted. And, as you can see, interviews are
8 going forward.

9 Q And do you recall when the pause was lifted?

10 A I don't. It was not long after we actually said, "Please
11 pause." It may have been two weeks later. It may have been
12 toward the end of September, beginning of October, but I don't
13 have an exact date.

14 Q Now, who is the ultimate decision-maker on whether or not
15 to dismiss any of Plaintiffs' administrative complaints at the
16 evaluation stage?

17 A The ultimate decision-maker on whether to dismiss any of
18 Plaintiffs' complaints -- administrative complaints -- at the
19 evaluation stage is the Assistant Secretary.

20 Q And who is the ultimate decision-maker on whether or not
21 to open any of Plaintiffs' administrative complaints for
22 investigation?

23 A That is likewise the Assistant Secretary.

24 Q And just to be clear, is the Assistant Secretary the
25 decision-maker even if the religious exemption is not

1 dispositive?

2 A Yes, it is. Under any circumstance, the Assistant
3 Secretary will have to approve dismissals or openings.

4 Q You testified that all but one of Plaintiffs'
5 administrative complaints are still pending with OCR; is that
6 correct?

7 A That is correct.

8 Q Do you know how OCR will resolve those complaints?

9 A I do not.

10 Q Why not?

11 A We have a process in place for the resolution of those
12 complaints, whatever the resolution might be. The process
13 actually begins, very importantly, at the regional office
14 level. I would not be -- I will not even know what that is
15 until a proposal comes forward from the regional offices. None
16 has -- with the exception of the one case that was dismissed,
17 no other proposals have come forward, to my knowledge.

18 Q Okay. And do you know when OCR will resolve those
19 complaints?

20 A Likewise I do not know when they will be resolved.

21 Q Why not?

22 A Again, there's a process in place. The evaluation process
23 is taking place at the regional office level. At a certain
24 point, the regional office will make a proposal going forward.
25 I do not know when that will happen.

1 Q Okay. And do you know whether or not OCR will dismiss any
2 of these complaints based on the religious exemption?

3 A I do not know that either.

4 Q Why not?

5 A Again, there's a process for evaluation of these
6 complaints. The evaluation may include looking at assurances
7 of exemptions. But it is a process. And, as of this date, I
8 have not had any indication that a proposal's been made to
9 dismiss based on an assurance or religious exemption.

10 Q And just to be clear, is it -- is it your decision -- is
11 it --

12 A No.

13 Q Is it your decision to dismiss those based on a religious
14 exemption?

15 A No. No. It is not my decision. The decision is always
16 the Assistant Secretary's.

17 Q Okay. And just very generally, what process will OCR --
18 excuse me -- very generally, what process will OCR Enforcement
19 use to continue to consider Plaintiffs' administrative
20 complaints?

21 A We use the process we use in every complaint in terms of
22 the evaluation process and deciding to go forward.

23 Q Okay. And you say "the process you use in every
24 complaint." Is that what you described during your testimony
25 on Friday?

1 A It's what I described during my testimony on Friday. It's
2 also what is set forth with a degree of specificity in OCR's
3 Case Processing Manual.

4 MS. SNYDER: Thank you, Your Honor. I have no
5 further direct questions.

6 THE COURT: Thank you. For the Plaintiffs, go ahead.
7

8 CROSS-EXAMINATION

9 BY MR. SOUTHWICK:

10 Q Good morning, Mr. Wills. This is Paul Southwick. We've
11 met each other a couple of weeks ago, if you recall, during
12 your deposition. Thanks for being here again today.

13 You just testified that -- I'm going to paraphrase a
14 little bit. But I think you just testified that "we use the
15 same process for every complaint." So the same process for the
16 Plaintiffs as you would use for any other complaint, and that
17 that process is found in the OCR Processing Manual; is that
18 fair to say?

19 A Yes, that's fair to say.

20 Q Okay. Can you point to me where in the OCR Process -- in
21 the OCR Processing -- sorry. Let me make sure I'm saying this
22 right. Can you point to me where in the OCR Case Processing
23 Manual -- so that's Government Exhibit 1 -- where it provides
24 guidance for OCR investigators in how to handle religious
25 exemption issues?

1 A There's no specific provision in the Case Processing
2 Manual on how to handle religious exemption issues. Similarly
3 there's no specificity in the Case Processing Manual for how to
4 handle other very specific issues that come before OCR. There
5 are general guidelines laid out that we do consider in all
6 cases. And certainly subject-matter jurisdiction is one of
7 those standards that we look to.

8 Q But it's not fair to say that they're treated the same;
9 right? Because there's an extra layer of analysis required
10 when there's a religious exemption; is that correct?

11 A There's an extra -- the analysis of any given case will be
12 a little bit different, certainly. But, generally speaking,
13 these are the principles, are the standards, that we look to in
14 evaluating cases.

15 Q So if I'm the OCR investigator, and a Plaintiff's
16 complaint has shown up on my desk, where should I turn -- where
17 should I turn in this Processing Manual to find out how I'm
18 going to analyze whether or not an existing religious exemption
19 covers the allegations in this complaint or not? Where am I
20 going to turn?

21 A Well, you may not know that, actually, when you first
22 receive a complaint. You may not be able to identify the
23 particular recipient as possibly an institution -- an
24 educational institution that's religious in nature. So you
25 wouldn't necessarily know that.

1 You'd simply move forward and look at timeliness, personal
2 jurisdiction, whether a consent form is necessary. And I think
3 we covered this on Friday. At that point, assuming all of
4 those other basic prerequisites were met, you would issue a
5 letter opening the complaint for investigation.

6 Q So sometimes the initial investigator might have no idea
7 of whether a religious exemption comes into play. Fair enough.
8 In other circumstances, the initial investigator might know
9 that there is a religious exemption issue there; is that
10 correct?

11 A That is correct.

12 Q And in that case, that initial investigator -- from your
13 prior testimony, I believe you said that initial investigator
14 is supposed to look and -- you know, if there -- and request to
15 see if there's an assurance of exemption on file. And if there
16 is, then that investigator is supposed to look at that
17 assurance of exemption, see what is exempted and why, and then
18 make a comparison and a determination on whether this complaint
19 sitting in front of them should be closed or open. Is that
20 generally correct?

21 A It -- generally, with a caveat. They're not making the
22 final determination. They certainly would be looking -- they
23 would speak to our Program Legal Group and determine whether,
24 as they suspected, an assurance existed. And, if so, review
25 that assurance to determine whether the exemption actually was

1 something that is covered -- that covers the allegations of the
2 complaint.

3 But they would not be making the final determination.
4 They might, on the basis of that, determine that it appears
5 that we do not have subject-matter jurisdiction because the
6 exemption covers the allegations in the complaint, or they may
7 make a preliminary determination that it does not, in which
8 case they would be recommending that we move forward with
9 issuing a letter notification.

10 Q So they don't make the final determination, but they make
11 the initial determination; is that correct?

12 A They will propose a step to take. Yes. They will make a
13 proposed determination.

14 Q And what kind of policy guidance, or guidance at all, does
15 OCR provide to those investigators to decide whether or not
16 certain religious tenets conflict with compliance with Title IX
17 with respect to that Title IX complaint sitting on their desk?
18 What kind of guidance do you provide? Because the Case
19 Processing Manual doesn't say anything about it. Have you
20 provided any guidance for your initial investigators on how to
21 make those determinations?

22 A We've not provided any official guidance on how to make
23 those determinations. And as you know, those determinations
24 are reviewed at numerous levels, all the way up to the final
25 level and the final decision-maker, which is the Assistant

1 Secretary.

2 Q But another thing that can happen is that the initial
3 investigator might not know that there is an assurance of
4 exemption on file, as you suggested earlier, and, in that case,
5 they might recommend opening an investigation. And if that is
6 affirmed by the Assistant Secretary, then an investigation
7 would be opened. And then the complainant would be notified
8 that the investigation is opened, and the educational
9 institution would also be notified the investigation was
10 opened; is that correct?

11 A That is correct.

12 Q And at that point, after opening the investigation,
13 somebody could point out, "Hey, there's an assurance of
14 exemption on file." And then the complaint could be closed at
15 that point on the basis of a preexisting assurance of
16 exemption; is that correct?

17 A That is a possibility. Yes, that is correct.

18 Q And I believe that you testified earlier that, in fact,
19 after the evaluation stage, you know, then there's the opening
20 of the investigation. And then the investigation could take
21 several months. There could be efforts at reaching resolution.
22 The complainant could have been providing, you know, a lot of
23 time and energy providing testimony and documents to OCR, as
24 could the educational institution. Is that fair to say that
25 sometimes these investigation processes can last several

1 months?

2 A Yes. Sometimes investigations can last several months.

3 Q And so despite all of that, and even if there were several
4 months of negotiations and evidence and a lot of resources by
5 OCR and a lot of personal emotional resources from the Title IX
6 complainant, at any point during that process, even at the very
7 end, an educational institution could assert an assurance of
8 exemption. And if OCR determines that it applies, the
9 allegations in the complaint -- everything -- would be over,
10 and the complaint would be dismissed; is that correct?

11 A That remains a possibility. Yes, that is correct, as a
12 possibility.

13 Q Earlier, Mr. Wills, you testified that all of the
14 Plaintiffs' complaints are in the evaluation stage. So I just
15 want to note that according to the Case Processing Manual --
16 so, again, Government Exhibit 1, Section 103, which is page
17 8 -- it says, "Once OCR determines pursuant to CPM Section
18 102" -- and Section 102 is whether information is subject to
19 further processing -- that it says, "Once OCR determines,
20 pursuant to CPM Section 102, that written information it has
21 received is appropriate for further processing, the information
22 is referred to as a complaint. And OCR will assign a case
23 number to the complaint and establish a file."

24 So at the TRO stage, the Court's opinion recognized that
25 the evidence at the time of the TRO in this case was that a lot

1 of the complaints had not even been assigned a case number.
2 But based on Exhibit 3 that we're looking at -- Government
3 Exhibit 3, which is the -- that chart of all the Plaintiffs'
4 complaints -- it's -- isn't it true that now all of Plaintiffs'
5 complaints have at least been assigned a case number and are at
6 the evaluation stage? Is that correct?

7 MS. SNYDER: Objection, Your Honor. He's misstated
8 testimony. The question is compound and confusing.

9 THE COURT: Rephrase your question. If you need to
10 break it down, break it down.

11 BY MR. SOUTHWICK:

12 Q Dr. Wills, is it accurate to say that all of Plaintiffs'
13 complaints have at least satisfied the requirements for being
14 assigned a case number because, in fact, they have been
15 assigned a case number; is that correct?

16 A That is correct.

17 Q All right. So, at this point, OCR has determined that it
18 has received written information such that it can move on to
19 further processing of the complaints; is that correct?

20 A That is correct.

21 Q All right. And during your deposition, you testified --
22 well, let me back up a little bit. So in this chart it states
23 that all of the Plaintiffs' complaints -- other than the one
24 BYU complaint that's been dismissed -- that they all remain in
25 the evaluation stage; is that accurate?

1 A That's accurate, yes.

2 Q And at your deposition, you testified that the average
3 time to complete the evaluation stage -- the whole evaluation
4 stage -- was 73 days. Do you recall that testimony?

5 A I recall that testimony. That is a -- 73 days was the
6 average time for completion of evaluation in fiscal year 2021.

7 Q And do you have any reason to doubt your prior testimony,
8 or does that remain accurate in your understanding -- 73 days?

9 A That remains accurate.

10 Q So all of the Plaintiffs' complaints, if you look at the
11 "received by" date -- you can look through each of the dates.
12 But at least for all the complaints that were filed in June and
13 July, which is the vast majority of all the complaints, we're
14 significantly beyond the 73 days; is that right?

15 A They are beyond the 73 -- the average of 73 days.

16 Q In fact, they're beyond 100 days; is that right?

17 A That appears to be correct.

18 Q And you referred to OCR taking a pause or putting a pause
19 on all of Plaintiffs' complaints. Do you recall approximately
20 how long Plaintiffs' complaints were put on hold by OCR?

21 A I don't recall how long they were put on hold. My
22 recollection is it was a fairly short period of time, but it
23 was a period of time definitely.

24 Q But that pause or that hold -- that wasn't because the
25 Plaintiffs did anything wrong filing their complaints. That

1 was -- is that fair to say?

2 A That is fair to say.

3 Q All right. So the pause -- the hold -- that was -- that
4 was OCR trying to get its ducks in order and figure out how
5 it's going to process these religious exemption issues; is that
6 right?

7 MS. SNYDER: Objection, mischaracterizes his
8 testimony.

9 THE COURT: Rephrase your question, please.

10 BY MR. SOUTHWICK:

11 Q The pause or the hold that you referred to on Plaintiffs'
12 complaints -- that was the decision of OCR to subject these
13 plaintiff complaints to that hold; is that correct?

14 A That was OCR's decision. Yes.

15 Q So now that the complaints have been free to resume --
16 they've all resumed the evaluation stage; is that correct?
17 None of them are still being held back; is that right?

18 A None are being held back. And I do want to point out that
19 the pause was simply on moving forward with interviewing
20 complainants or complainants representatives. It did not pause
21 all work on these cases or any review of documentation that we
22 had.

23 Q Okay. So the pause -- the hold -- that was just on
24 interviews and the -- and what was the purpose of those
25 interviews? Was that to gather additional information for

1 evaluation?

2 A Yes. Generally speaking, when we reach out to
3 complainants during the evaluation stage -- and it's not a
4 requirement to do so, as I indicated in earlier testimony --
5 it's really to clarify complaints; to understand better what
6 the allegations of the complaint are; to understand and
7 address, if appropriate, issues of timeliness and waiver.
8 They're a variety of issues we may be looking at in a
9 clarification call.

10 Q All right. So now that the pause is lifted, would you
11 agree -- and -- now that the pause is lifted, and it's been,
12 you know, over 100 days for most of these complaints, would you
13 agree that the investigations should, in general, be nearing
14 the completion of the evaluation stage at this point?

15 MS. SNYDER: Objection, speculation and foundation.

16 THE COURT: Overruled. If he knows the answer, he
17 can give it.

18 THE WITNESS: Mr. Southwick, would you repeat the
19 question, please?

20 BY MR. SOUTHWICK:

21 Q Sure. Given that the hold or the pause has been lifted,
22 and that these complaints have been filed generally more than
23 100 days ago, would you agree that, in general, these
24 complaints should be nearing the completion of the evaluation
25 stage at this point?

1 A I can't answer whether they should be nearing the
2 completion of the evaluation stage, because I don't actually
3 know what -- other than the brief descriptions here -- what
4 state these particular complaints are in. Some may be near
5 that stage. Some may not yet be near that stage. So -- which
6 is the best I can do by way of answer to your question right
7 now.

8 Q So could these investigators just continue to sit on these
9 complaints for months and months? Would that be acceptable to
10 you?

11 MS. SNYDER: Objection, misstates his testimony in
12 the record.

13 THE COURT: Rephrase --

14 BY MR. SOUTHWICK:

15 Q I'm not misstating -- I'm not saying it was your
16 testimony, Mr. Wills. I'm asking you --

17 THE COURT: Excuse me.

18 BY MR. SOUTHWICK:

19 Q You're the Director of Enforcement at OCR.

20 THE COURT: Excuse me.

21 MR. SOUTHWICK: Oh.

22 THE COURT: Yeah. Please listen when I -- I tried to
23 interrupt a minute ago. Rephrase your question and just ask it
24 in the form of a question.

25 MR. SOUTHWICK: Apologies, Your Honor.

1 BY MR. SOUTHWICK:

2 Q Mr. Wills, as the Director of Enforcement at OCR, would it
3 be acceptable for you -- to you -- for investigators to just
4 continue sitting on Plaintiffs' complaints and not moving the
5 process of processing them along?

6 MS. SNYDER: Objection, foundation and misstates the
7 testimony.

8 THE COURT: Overruled. He can answer the question if
9 he can answer it.

10 THE WITNESS: Mr. Southwick, I don't believe that the
11 investigators are sitting on these complaints. There's -- as I
12 testified earlier, and as we've seen even from the earlier
13 Government Exhibit No. 3, there has been action taken. There
14 are interactions happening with the complainants in appropriate
15 instance. So I don't view them, first of all, as sitting on
16 these complaints at this point.

17 Yes, it is our hope to move through the process of
18 processing complaints always as expeditiously as possible but
19 also with appropriate consideration to all the factors that we
20 have to consider before we determine whether to open a
21 complaint. But I do want to stress that I do not find that
22 what is happening now, as far as I've been told, constitutes
23 sitting on these complaints.

24 BY MR. SOUTHWICK:

25 Q Okay. So the average time to complete the evaluation

1 stage is 73 days. But it's been more than 180 days. And only
2 one of Plaintiffs' 35 or 36 complaints have actually completed
3 the evaluation stage; isn't that true?

4 MS. SNYDER: Objection, misstates the testimony.

5 THE COURT: Overruled. I don't -- overruled.

6 THE WITNESS: Mr. Southwick, again, I would ask you
7 to repeat the question. Because maybe I misunderstood. I
8 thought I heard you say that there are complaints that are over
9 180 days old.

10 BY MR. SOUTHWICK:

11 Q Sorry. If I said that, I misspoke. I was saying 100
12 days. What I'm asking, Mr. Wills, is out of the 35 or 36
13 complaints that we have here on Government Exhibit 3, only one
14 of them has actually made it through the evaluation stage;
15 right?

16 A That is correct.

17 Q Okay. So the other 90-plus percent of complaints have not
18 completed the evaluation stage, even though it's been over 100
19 days; is that accurate?

20 A That is accurate.

21 Q Mr. Wills, during your deposition, do you recall us
22 looking at some of the George Fox University correspondence
23 with OCR and decisions from OCR regarding a transgender student
24 who was making a housing discrimination complaint back in 2014?

25 A Yes, I do.

1 Q And do you recall that after that complaint was opened for
2 investigation, George Fox University asserted a religious
3 exemption, and that the Office of Civil Rights then dismissed
4 that complaint on the basis of the religious exemption?

5 A Yes, I recall that.

6 Q Mr. Wills, are you familiar with that process happening
7 with respect to other LGBT students at other educational
8 institutions?

9 A Mr. Southwick -- which process, Mr. Southwick? The
10 process -- please just clarify that for me.

11 Q Well, Mr. Wills, a transgender student's housing complaint
12 was dismissed by OCR on the basis of a religious exemption.
13 I'm wondering, are you familiar whether the Office of Civil
14 Rights has similarly dismissed other complaints from LGBTQ
15 students on the basis of the religious exemption to Title IX?

16 A I believe so. I'm just trying to recall whether the
17 complaint that I had in mind involves an LGBTQ student, which I
18 don't recall right now. I would need to refer to an exhibit to
19 make that determination. OCR has certainly dismissed other
20 complaints on the basis of assurance of exemption that covered
21 the allegations of the complaint.

22 Q So yesterday -- or, excuse me -- on Friday my office
23 circulated some documents to be used for cross-examination to
24 the Court and Counsel. I'm going to share my screen and pull
25 up some of these. The three documents I'm going to look at

1 were attached as exhibits to a declaration in this case in the
2 briefing on the initial motion for a temporary restraining
3 order and preliminary injunction.

4 The first document that I'm pulling up here is Docket
5 No. 50-21. And it is a correspondence between the Office of
6 Civil Rights and Spring Arbor University in -- it looks like
7 2013 -- the 2013 and 2014 time period. Mr. Wills, have you
8 seen these documents before?

9 A I have not.

10 Q All right. I'm happy to go through them. Are you able to
11 see these, or would you like a printed copy?

12 A I actually would like a printed copy because the screen is
13 rather far away, and it's very hard for me to read.

14 Q Sure.

15 MR. SOUTHWICK: Hilarie, are you able to print a copy
16 for the witness?

17 MS. SNYDER: We are. But you need to give us a few
18 minutes to do it.

19 MR. SOUTHWICK: Okay.

20 BY MR. SOUTHWICK:

21 Q Well, I'll go ahead and like to introduce these exhibits
22 so we can kind of go through that process now while we're
23 waiting for physical copies. I'd like to introduce the exhibit
24 on my screen here as Plaintiffs' Exhibit No. 21.

25 THE COURT: Objections? Can everybody see it and

1 make that decision?

2 MS. SNYDER: Your Honor, may we -- once we get the
3 hard copy, could --

4 THE COURT: Sure.

5 MS. SNYDER: -- we take a look then? Thank you. I
6 don't anticipate an objection, but I would like to see it.

7 MR. SOUTHWICK: All right.

8 BY MR. SOUTHWICK:

9 Q And just the three documents we're going to look at -- the
10 next one is Docket 50-20. And this is a similar line of
11 correspondence between OCR, but this is with Liberty University
12 in 2014. And then Docket 50-18 -- this is with BYU-Idaho and
13 the Office of Civil Rights. These are the three documents I'd
14 like introduced as Exhibits 21, 22, and 23.

15 MS. SNYDER: Elliott went to print them. Do you guys
16 want to take like a two-minute break to allow that to happen?

17 THE COURT: Let's do that. Let's do that.

18 MR. SOUTHWICK: All right. Sounds good. Thank you.

19
20 (A break was taken from 8:46 AM to 8:58 AM.)
21

22 THE COURT: Does everybody have the copies? Is
23 everybody back? Go ahead and please be seated.

24 MR. SOUTHWICK: Plaintiffs are back.

25 THE COURT: Does everybody have copies of the

1 requested admission of the Exhibits 21, 22, and 23?

2 MS. SNYDER: Yes, Your Honor.

3 THE COURT: All right. Objections?

4 MR. TUCKER: No objection from CCCU, Your Honor.

5 MS. SNYDER: No objections from the Government
6 Defendants, Your Honor.

7 MR. TUCKER: This is Ryan Tucker. No objections from
8 the Religious Schools.

9 THE COURT: Thank you. They will be received.
10 Continue with your cross.

11 BY MR. SOUTHWICK:

12 Q Thank you, Dr. Wills. So I'm going to turn to
13 Exhibit No. 21, which is the Spring Arbor University
14 correspondence. And it looks like your lawyers had a chance to
15 provide a print-out of that. I'll just go through this
16 document with you since you -- do you have it in front of you,
17 Mr. Wills?

18 A I do. Thank you.

19 Q All right. So the first page is stamped December 6th,
20 2013. And this is a correspondence from OCR to the President
21 of Spring Arbor University. Does that look correct to you?

22 A Yes, it does.

23 Q And the subject line says "OCR Docket No. 15-14-2006. And
24 so this appears to be in response to an OCR Title IX Complaint;
25 is that correct?

1 A Yes, that's correct.

2 Q All right. And in this correspondence, OCR recognizes
3 that on November 4th of 2013 -- so about a month prior -- OCR
4 received a complaint filed against Spring Arbor University
5 alleging sex-based discrimination against the student. The
6 complaint alleges that the university is discriminating against
7 the student based on sex by denying him equal access to
8 university's education program and activities because -- and
9 then there are some redactions about the specific allegations.
10 Does that look accurate?

11 A Yes, it does.

12 Q And just so that we can kind of fill in some of the
13 missing pieces, we can tell that this is a complaint filed by
14 an LGBTQ+ student if we look down towards the last page here,
15 page 7. On page 7, the last page of this document, which is
16 further correspondence from OCR to Spring Arbor, it states that
17 in a letter dated June 27th, 2014, OCR's Assistant Secretary
18 granted the university's request and stated in relevant part
19 that the university is exempt from the above provisions, quote,
20 "to the extent that they prohibit discrimination based on
21 gender identity or sexual orientation, or require a recipient
22 to treat students consistent with their gender identity, and
23 compliance would conflict with the controlling organization's
24 religious tenets." Is that an accurate reading of this
25 document?

1 A Yes, it is.

2 Q All right. So going back to the first page, I just wanted
3 to clarify, because of the redactions, that we are dealing with
4 an LGBTQ+ student here. The second paragraph of page 1 talks
5 about Title IX and OCR's Enforcement. Third paragraph says,
6 "Because OCR has jurisdiction over this allegation, and it was
7 filed timely, OCR is opening this complaint for investigation."

8 And so is it fair to say that at the time this complaint
9 was filed, OCR was processing complaints by LGBTQ students for
10 gender identity or sexual orientation discrimination?

11 A Yes.

12 Q All right. And then it goes on to discuss the Title IX
13 claim. If you go to page 2, it says that the Department is
14 opening this matter for investigation, describes the Case
15 Processing Manual processes as you've described. Page 2 says,
16 "Going to conduct the prompt investigation."

17 And then if you look down towards the end of page 2, OCR
18 makes a request of Spring Arbor University. And it says,
19 "Therefore, requesting that you forward the following
20 information to us within 15 calendar days." And you asked for
21 a number of documents, including a copy of the university's
22 policies, procedure of --

23 MS. SNYDER: Objection, Your Honor. I hate to
24 interrupt, but I believe Counsel's testifying.

25 THE COURT: Will you please just ask a question and

1 refer to the document that the witness can read for himself,
2 please? Go ahead.

3 MR. SOUTHWICK: Sure.

4 BY MR. SOUTHWICK:

5 Q Mr. Wills, is it fair to say that this -- the first three
6 pages of this document that we're looking at demonstrates the
7 Office of Civil Rights opening up an investigation for LGBTQ
8 discrimination on behalf of the Title IX complainant at Spring
9 Arbor University?

10 A Yes, that's fair to say that.

11 Q Okay. And this was -- this was at the end of 2013. All
12 right. And then let's look to the next -- page 4. This is --
13 the next correspondence is from August of 2014 -- so about
14 seven or eight months later. This is also from OCR -- same
15 case number. And it talks about the complaint that was filed.

16 MS. SNYDER: Again, objection, Your Honor. Counsel's
17 testifying.

18 MR. SOUTHWICK: I'm merely trying to provide some
19 context for the document. I could ask --

20 BY MR. SOUTHWICK:

21 Q Mr. Wills, have you read this document before?

22 A I read it today. Yes.

23 Q All right. Since you've already read it, is it fair to
24 say that this correspondence from August of 2014 acknowledges
25 that Spring Arbor University requested and received a religious

1 exemption from Title IX relating to sexual orientation and
2 gender identity, and specifically with respect to a number of
3 implementing regulations as described on page 6 and 7 of this
4 document?

5 A Yes, that is accurate.

6 Q And is it also accurate that on the basis of the religious
7 exemption granted by OCR, the student's Title IX complaint was
8 administratively closed?

9 A Yes, that is correct.

10 Q So similar to the transgender student at George Fox
11 University, this LGBT student at Spring Arbor University also
12 had their open Title IX complaint administratively closed on
13 the basis of the religious exemption; is that right?

14 A That's right.

15 Q All right. If you could turn to Exhibit No. 22, the
16 Liberty University correspondence dated January 16th, 2014.
17 And have you had an opportunity to review this document?

18 A I'm currently reviewing it.

19 THE COURT: I'm going to step out a sec.

20
21 (A break was taken from 9:08 AM to 9:09 AM.)
22

23 BY MR. SOUTHWICK:

24 Q And take your time, Mr. Wills, but just let us know when
25 you've finished your review.

1 A I've completed my review.

2 Q All right. I'd just like to ask you a few questions about
3 the first -- the first few pages of this document are a
4 correspondence between Jerry Falwell, the former President of
5 Liberty University, and the Office of Civil Rights; is that
6 correct?

7 A That is correct.

8 Q And Jerry Falwell says that this letter grew out of a
9 November 8th, 2013, letter that it received from the District
10 of Columbia office of OCR regarding a complaint filed against
11 Liberty with the allegation that the antiabortion policy
12 discriminated against female students; is that accurate?

13 A That is accurate.

14 Q And then if you look down to the bottom of page 1, it says
15 that "the Department asked Liberty to formally claim a
16 religious exemption under 34 CFR 106.12 by providing the names,
17 the religious entity" -- "the names" -- it looks like there's a
18 missing "of" -- "of the religious entity that oversees the
19 university, description of specific religious tenets the
20 university believe they're inconsistent with Title IX, and
21 provisions of the Title IX regulation from which the university
22 claims an exemption."

23 Mr. Wills, is it OCR's practice to invite educational
24 institutions to formally claim religious exemptions in response
25 to Title IX complaints against those educational institutions?

1 A I cannot state that that is OCR's official practice.

2 Q But it is OCR's official practice now; isn't it? Because
3 didn't you testify earlier that now in each -- in each letter
4 in which OCR is going to open a Title IX investigation, it in
5 fact invites the educational institution to claim any number of
6 exemptions, including religious exemptions to Title IX, rather
7 than comply with the opening of the investigation; isn't that
8 correct, Mr. Wills?

9 A I have to disagree with that characterization. The
10 letter -- the current letter opening cases for investigation is
11 not an invitation. There's no specific invitatory language in
12 that letter. It simply informs a recipient that these
13 exemptions and exceptions are available without even describing
14 what they might be, and it -- and states simply if you
15 intend -- or if the recipient intends to exercise any right
16 under that -- under any of those sections, please notify OCR.

17 But there's no inviting or "we ask you to" or "we invite
18 you to file for an assurance," which is, at least as it's
19 recorded here, different from the language in the letter to
20 Robin Murphy from Liberty University.

21 Q But that change in OCR's letters -- the change in OCR's
22 letters regarding opening investigation, which provides
23 information about exemptions that can be claimed -- I believe
24 that you testified that language was changed in response to the
25 Title IX complaints raising religious exemption issues that

1 were filed this year; is that correct?

2 A That is correct.

3 Q So --

4 A The change of language was added, actually, as a response
5 to that.

6 Q So, previously, OCR would not have alerted educational
7 institutions, "Look, we're opening investigation. But you may
8 be exempt." The prior language in the opening letters didn't
9 provide that kind of notification of exemption to educational
10 institutions; did it?

11 A That is correct. We did not include the current language
12 in prior letters of notification --

13 Q So Dr. Falwell --

14 A -- with religious exemptions.

15 Q So Jerry Falwell -- at least his interpretation was that
16 he was asked -- at least according to this document -- and then
17 he goes on to provide that justification. And we don't need to
18 go through all of it. But he describes the -- Liberty
19 University and its beliefs and its governing structure. Is
20 that a fair summary of the rest of the document?

21 A I would say that is a fair summary of the rest of the
22 document. Yes.

23 Q All right. And then in response -- so this is April
24 22nd -- so a few months later -- the Office of Civil Rights
25 responds to Mr. Falwell. And could you summarize for the Court

1 what OCR's response to Mr. Falwell is?

2 A Certainly. The response of communication from the
3 Assistant Secretary for Civil Rights is essentially the
4 issuance of an assurance of exemption based on the request that
5 Reverend Falwell made in the earlier communication.

6 Q And, in fact, OCR grants the exemption to allow Liberty
7 University to punish women who have abortions; is that correct?

8 A I don't see anywhere in this letter a granting of allowing
9 Liberty University to punish women. It granted the exemption
10 that was requested.

11 Q Would you -- we could read over Liberty University's
12 request again if you'd like, but isn't it about honor code
13 violations for having abortions? Or termination of pregnancy?

14 A Yes, it is.

15 Q So Liberty University was asking OCR to grant a religious
16 exemption to allow it to continue to enforce its honor code to
17 punish students who have terminated their pregnancies.

18 MS. SNYDER: Objection, Your Honor, argumentive. The
19 documents speak for themselves.

20 THE COURT: Sustained.

21 MR. PRINCE: Also relevance, Your Honor. This is
22 Joshua Prince.

23 BY MR. SOUTHWICK:

24 Q And the last page of this document notes that Jerry
25 Falwell actually requested an exemption from 34 CFR 106.31(b)

1 to allow the university to maintain a policy allowing for the
2 discipline of students who have an abortion. However, OCR
3 looks like, on its own accord, said, "Well, the actual
4 provision that you want an exemption from is 34 CFR 106.40(b),"
5 and then OCR goes on to grant that exemption. Is that a
6 correct understanding of that paragraph?

7 MS. SNYDER: Objection, speculation and relevance.

8 BY MR. SOUTHWICK:

9 Q Mr. Wills --

10 THE COURT: Wait, wait, wait. Sustained. Move on.

11 BY MR. SOUTHWICK:

12 Q All right. The last document in this series I'd like to
13 ask you about, Mr. Wills, is Plaintiffs' Exhibit No. 23,
14 BYU-Idaho correspondence. This is a four-page document. And
15 have you had a moment to briefly review this, Mr. Wills?

16 A I'm reviewing it right now, Mr. Southwick.

17 Q All right. Thank you.

18 A I've finished reading the letter.

19 Q Thank you, Dr. Wills. Is it fair to say that this letter
20 is from BYU-Idaho's President to the Office of Civil Rights
21 regarding a Title IX complaint it received from a transgender
22 student?

23 A I can infer that from reading the letter it involves
24 gender identity. But I don't see any specific reference to a
25 particular transgender student -- unless I missed that.

1 Q And then if you look at the bottom of page 3, it states
2 very specifically, "The complaint against BYU" --

3 A I --

4 Q Do you see that?

5 A Yes, I see that. I do.

6 Q Okay. So we're talking, again, about a complaint filed
7 against BYU-Idaho with the Office of Civil Rights on behalf of
8 a transgender student. And then this is BYU-Idaho responding
9 to the Office of Civil Rights regarding that complaint; is that
10 fair to say?

11 MS. SNYDER: Objection, foundation and speculation.

12 THE COURT: Rephrase your question.

13 BY MR. SOUTHWICK:

14 Q Dr. Wills, now that you've had an opportunity to review
15 this correspondence, could you describe the general nature of
16 this correspondence?

17 A Generally speaking, this is a response by the President of
18 BYU-Idaho to a communication he received -- or Brigham Young
19 received from the Office for Civil Rights. And in this
20 communication from the President of BYU-Idaho, the President
21 sets forth the bases for requesting a religious exemption or a
22 religious exemption with regard to the complaint filed by a
23 transgender student with the Office for Civil Rights.

24 Q And then the letter goes on, on page 4, to reference a
25 prior religious exemption that BYU-Idaho received from the

1 Office of Civil Rights back in the 1980s; is that correct?

2 A That's correct. It references an exemption that was
3 assured to the predecessor institution -- Ricks College.

4 Q And then are you aware of whether or not OCR affirmed that
5 religious exemption for BYU-Idaho in the context of this
6 complaint?

7 MS. SNYDER: Objection. Confusing, ambiguous
8 question.

9 THE COURT: Overruled.

10 THE WITNESS: I cannot say with certainty that the
11 exemption was assured with regard to this particular complaint.
12 I would have to review further documentation to make that
13 statement.

14 BY MR. SOUTHWICK:

15 Q However, based on current OCR policies, given that
16 BYU-Idaho raised this exemption, if the -- if it had properly
17 followed OCR's guidance with respect to requesting an assurance
18 of exemption, the Office of Civil Rights would have granted
19 that exemption with respect to gender identity; is that
20 correct?

21 MS. SNYDER: Objection, foundation and speculation.

22 THE COURT: Sustained.

23 BY MR. SOUTHWICK:

24 Q So, Dr. Wills, we've looked at a number of documents in
25 which LGBT students as well as at least one instance in

1 which -- a woman who had an abortion -- were trying to assert
2 their Title IX rights at federally funded educational
3 institutions by filing Title IX complaints with the Office of
4 Civil Rights. And is it fair to say that in at least some of
5 these instances that we reviewed just now, the Office of Civil
6 Rights responded by administratively closing those students'
7 Title IX complaints; is that right?

8 A That is correct.

9 Q Dr. Wills, are you aware of any situation in which an
10 LGBTQ student has gone to the Office of Civil Rights for help
11 against a religious educational institution with claims of
12 discrimination where the Office of Civil Rights has actually
13 been able to help that student rather than dismissing that
14 student's complaint?

15 A Can you rephrase the question, please? Or just restate
16 it. "Am I aware of" --

17 Q Mr. Wills, are you aware of any cases in which an LGBTQ
18 student has filed a Title IX complaint for sexual orientation
19 or gender identity discrimination against an educational
20 institution, that had already received an assurance of
21 exemption or had claimed a religious exemption in the course of
22 that Title IX administrative proceeding, and where the Office
23 of Civil Rights has actually been able to help that student as
24 opposed to administratively dismissing their complaint on the
25 basis of the religious exemption?

1 MS. SNYDER: Objection, ambiguous.

2 THE COURT: Overruled. If he knows the answer, he
3 can give it. If he doesn't know the answer, he can give it as
4 well.

5 THE WITNESS: I'm not aware of a situation where an
6 assurance of exemption has issued from the Assistant Secretary
7 that covers the allegations of a complaint filed by an LGBTQ
8 student where OCR has not dismissed the complaint for lack of
9 jurisdiction.

10 BY MR. SOUTHWICK:

11 Q Thank you, Mr. Wills. And during your deposition,
12 Mr. Wills, I had asked you about whether or not the religious
13 exemption restricts OCR's ability to prevent sex discrimination
14 at educational institutions that receive federal financial
15 assistance. And do you recall that your testimony was that in
16 fact the religious exemption did restrict OCR's ability to
17 prevent sex discrimination?

18 A Yes. I recall my testimony.

19 Q And do you stand by that testimony today?

20 A I do.

21 Q During your deposition, we reviewed some documents from
22 the -- well, I guess, now Former Acting Assistant Secretary.
23 So just to clarify, the Acting Assistant Secretary named as a
24 defendant in this lawsuit was Suzanne Goldberg. But I believe
25 it's my understanding from your testimony on Friday that the

1 new Assistant Secretary has indeed been confirmed, and that
2 that is Catherine Lhamon; is that correct?

3 A That is correct.

4 Q And so the prior acting Assistant Secretary had put out a
5 number of documents. And we reviewed one during your
6 deposition in which the Acting Assistant said that sex
7 discrimination threatens equal access for students and can
8 derail opportunities for them to learn. And I asked whether
9 you agreed with that statement, and you said that you did
10 agree. Do you recall that testimony?

11 A I do recall that testimony.

12 Q And does that remain your testimony today?

13 A Yes, it does.

14 Q And during your deposition, I asked you whether or not a
15 student could attend an educational institution and not know
16 whether their Title IX rights would be protected at that
17 institution, because that institution might not currently have
18 an assurance of exemption but could request one at a later
19 time. And your testimony was that, "Yes, indeed, a student
20 could attend an institution and not know whether their Title IX
21 rights would be protected." Is that your recollection of your
22 testimony?

23 MS. SNYDER: Objection, speculation.

24 THE COURT: Overruled.

25 THE WITNESS: Yes, that's my recollection.

1 BY MR. SOUTHWICK:

2 Q And does that remain your testimony today?

3 MS. SNYDER: Again, objection, speculation.

4 THE COURT: Overruled.

5 THE WITNESS: Yes.

6 BY MR. SOUTHWICK:

7 Q During your deposition, I also asked you whether OCR can
8 investigate discriminatory policies as opposed to merely
9 discrete discriminatory acts. And I believe that your
10 testimony was that, "Yes, OCR has subject-matter jurisdiction
11 to investigate discriminatory policies." Is that an accurate
12 description of your testimony?

13 A Yes, it is.

14 Q And does that remain your testimony today?

15 A It does.

16 Q And during your testimony, we went over Bob Jones
17 University's student policy, which -- student conduct code --
18 which we've -- we went over with the Court with the witness
19 from Bob Jones University earlier. And that had to do with
20 prohibitions on same-sex dating, prohibitions on transgender
21 students medically transitioning. And I asked you whether or
22 not such a policy would be considered an unlawful policy but
23 for the religious exemption to Title IX.

24 Putting the religious exemption to Title IX aside, would a
25 general policy like that -- would OCR consider that to be

1 unlawful under Title IX? And --

2 MS. SNYDER: Objection, Your Honor. Oh, sorry, Paul.

3 BY MR. SOUTHWICK:

4 Q And I believe that your testimony at pages 223 and 224 of
5 your deposition was that "Yes, such a policy would be unlawful
6 and under OCR subject-matter jurisdiction." Do you recall
7 whether that is an accurate description of your testimony?

8 MS. SNYDER: Objection, compound and ambiguous
9 question.

10 THE COURT: Overruled.

11 THE WITNESS: I do recall that that was my testimony.
12 And under those circumstances, putting aside the issue of
13 religious exemption, OCR would open an investigation and
14 investigate a complaint that alleged that the policy was
15 violated.

16 BY MR. SOUTHWICK:

17 Q And, Mr. Wills, are you aware that -- of the 36 Title IX
18 complaints from the Plaintiffs that are listed on Government
19 Exhibit 3 -- that approximately ten of those have been filed by
20 students who are current students at the educational
21 institutions? Meaning they're not alumni, they weren't
22 expelled, but they are currently at educational institutions as
23 current students; are you aware of that?

24 A I am not aware of that.

25 Q But would you agree that for a current student who alleges

1 injuries stemming from a discriminatory policy, like the Bob
2 Jones University policy, that such a current student would be
3 stating a claim within the subject-matter jurisdiction of OCR
4 setting aside the religious exemption?

5 MS. SNYDER: Objection, speculation.

6 THE COURT: Overruled.

7 THE WITNESS: Generally speaking -- and I state this
8 with a great deal of caution -- yes. That would be something
9 that would generally move us toward opening a complaint for
10 investigation. But, again, I do not like to speculate based on
11 hypotheticals. I do not give advisory opinions. I'm not
12 necessarily the complete decision-maker in every process. But,
13 generally speaking, that would weigh in favor of opening a
14 complaint for investigation.

15 BY MR. SOUTHWICK:

16 Q Mr. Wills, I am getting near the end of my cross. But
17 I -- there's one -- there's one more document that I'd like to
18 ask you about from Government's -- from the Government's
19 exhibit. And I believe that is the Smith memorandum, which --

20 MR. SOUTHWICK: Joe, do you have the exhibit list?

21 For the Court's reference, the Plaintiffs would like to
22 turn to Government's Exhibit No. 11.

23 Oh -- yeah -- Smith; right? Let me just make sure I've
24 got the right memorandum. Yeah -- Smith 1989 -- so Government
25 Exhibit No. 11.

1 BY MR. SOUTHWICK:

2 Q And just let me know when you've had a chance to get
3 there, Mr. Wells, and to at least take a little review of the
4 document.

5 A Yes. I'm looking at the document right now.

6 Q I'm going to ask you some questions about pages 3 and 4 of
7 Government Exhibit 11. And it's under the section that has a
8 headline of "Investigations of Institutions with Religious
9 Exemptions." So if you could particularly just take a review
10 of those paragraphs, and then let me know when you've had a
11 chance to review those.

12 A I've finished my review of the paragraphs.

13 Q Thank you, Mr. Wells. So just for everyone's
14 recollection, I included Exhibit 11. This is one of the
15 memorandums that you've testified that is part of the guidance
16 for OCR in what to do in situations where a Title IX complaint
17 comes in and there's been a religious -- an assurance of
18 religious exemption already on file. Is that fair to say that
19 this is what this section of Exhibit 11 is about?

20 MS. SNYDER: Objection, I think this is -- I don't
21 believe that Mr. Wells has testified about this here today.
22 Your question was -- misstates past testimony and is ambiguous.

23 MR. SOUTHWICK: I'll rephrase.

24 THE COURT: Go ahead.
25

1 BY MR. SOUTHWICK:

2 Q Mr. Wills, are you familiar with Government Exhibit
3 No. 11?

4 A I am.

5 Q And, in fact, it's a document you reviewed in preparation
6 for your 30(b)(6) deposition; is that correct?

7 A That is correct.

8 Q And could you describe for the Court what this document
9 is?

10 A This is a document from the then Acting Assistant
11 Secretary for Civil Rights William Smith directed to OCR senior
12 staff. And it lays out Title IX religious exemption procedures
13 and instructions for investigating complaints at institutions
14 with religious exemptions.

15 Q Okay. So then let's go ahead and go to the bottom of page
16 3 of Exhibit 11, which has a Bates Stamp ED2.000078, and that
17 section about investigations of institutions with religious
18 exemptions. Let me know when you've been able to find that.

19 A All right. I've located it.

20 Q So the first sentence there says, "When a complaint is
21 filed against an institution that has already been granted a
22 religious exemption by OCR, the regional offices should
23 carefully review OCR's letter granting the exemption and the
24 institution's letter requesting the exemption to determine
25 whether the complaint allegations fall within the exemption

1 granted."

2 My question to you -- is this OCR's current practice or
3 current policy?

4 A The current policy is for OCR -- where a religious
5 exemption assurance has been granted -- is to review the letter
6 of assurance and determine whether the exemption that has been
7 assured covers the particular allegations of the complaint.

8 Q So the next sentence says, "The letters requesting and
9 granting the exemption will clarify the extent of the
10 exemption." Do you agree with that assessment in terms of
11 OCR's current policy?

12 A I do.

13 Q All right. Then a little bit further down, it gives an
14 example of a potentially -- it gives an example of a situation.
15 And I'll read that. It says, "For example, if a complainant
16 alleges that an institution with a religious exemption to
17 Section 106.34 does not provide women with access to advanced
18 courses in chemistry, the regional office must determine
19 whether the institution's exemption to 106.34 addresses courses
20 in chemistry by reviewing the letters requesting and granting
21 the exemption. The regional office's review of the religious
22 exemption file indicates that the exemption is only for those
23 courses training future ministers, which are based on religious
24 tenets limited to men, then the regional office must
25 investigate the complainant's allegations regarding access to

1 advanced chemistry courses."

2 Do you see that there in this document?

3 A I do see that.

4 Q So my question to you is does current OCR policy follow
5 this guidance document from Exhibit No. 11?

6 A Yes. This is a statement of OCR's current policy toward
7 assessment of the extent of a religious exemption. We must do
8 that carefully. In saying that we look to what the
9 exemption -- what provision is exempted, we must also carefully
10 assess whether it covers, completely, all of the allegations of
11 the complaint.

12 This is a perfect example of a situation where that might
13 not be the case, where the exemption really ran to -- you're
14 exempted from coursework. Women can be excluded from certain
15 coursework that is related only to providing training for men
16 who are training for the priesthood or the ministry. It does
17 not provide a blanket exemption for advanced chemistry courses,
18 necessarily. It's a stock example offered here, but it's a
19 caution to the field to be very careful and deliberate in
20 determining what exactly the exemption covers and what are the
21 nature of the allegations in the complaint.

22 Q So I'd like to refer to one of the specific examples
23 that's in this case. And that would be Alex Duron, a plaintiff
24 who testified on day one of this preliminary injunction
25 hearing, in which he testified about having his admission

1 rescinded to a graduate nursing program because of his sexual
2 orientation.

3 So my question to you, Mr. Wills, is when OCR is
4 evaluating Mr. Duron's complaint, is it going to be asking
5 whether or not Union University -- the university he
6 attended -- whether or not Union University's religious tenets
7 regarding sexual orientation require the university to rescind
8 his admission to a graduate nursing program? Is that the kind
9 of analysis that will be done?

10 A I don't speak to the kind of analysis that will be done.
11 I can't speculate as to the analysis. We will do a thorough
12 and careful analysis of each one of the complaints that we have
13 before us. But I don't speak to what that analysis is going to
14 include, other than it will be careful, thoughtful, and
15 accurate.

16 Q And so when the Office of Civil Rights closed the door by
17 administratively dismissing Title IX complaints, at least from
18 the transgender student at George Fox University and Spring
19 Arbor University, was OCR obligated to do an analysis of
20 whether or not those institutions' beliefs about gender and
21 gender identity required denying access to an on-campus
22 restroom to a transgender student? Is that kind of analysis
23 being done?

24 MS. SNYDER: Objection, speculation and ambiguous.

25 THE COURT: Overruled. If he can answer, he can

1 answer.

2 THE WITNESS: I don't know what the analysis was in
3 that particular case. So I can't answer that question with
4 specificity. All I can do is say that the documents such as
5 they are speak for themselves.

6 BY MR. SOUTHWICK:

7 Q But, Dr. Wells, you're going to -- you're going to have to
8 answer this question; aren't you? Because you are the Director
9 of Enforcement at OCR; is that correct?

10 MS. SNYDER: Objection, misstates --

11 MR. SOUTHWICK: Let me back that up.

12 MS. SNYDER: -- misstates the question.

13 THE WITNESS: Yeah.

14 BY MR. SOUTHWICK:

15 Q Dr. Wells, you are the Director of Enforcement at the
16 Office of Civil Rights; is that correct?

17 A That's not my official title. But, yes, for all intents
18 and purposes, I am the Director of Enforcement at OCR.

19 Q And then along with the Assistant Secretary, you and a
20 small group of headquarters officials are going to be reviewing
21 each and every one of Plaintiffs' Title IX complaints that have
22 been filed in this action. Whether or not the recommendation
23 is for dismissal or to open investigation, you, the Assistant
24 Secretary, and a small group of headquarters officials are
25 going to be reviewing each and every one of these complaints;

1 is that correct?

2 A That is correct. I can't tell you the size of that small
3 group, but, yes, this will be reviewed by a number of
4 individuals at the headquarters office, bearing in mind that
5 the final decision is only and exclusively the Assistant
6 Secretary's.

7 Q I do apologize. There is one last document to ask you
8 about, but it's going to be very short. And this is Government
9 Exhibit No. 21. And, Mr. Wills, have you seen Government
10 Exhibit 21 before?

11 A Yes, I have.

12 Q And can you just briefly describe this document?

13 A Yes. This document is a listing of each of the recipients
14 and the corresponding Plaintiffs, slash, complainants in the
15 cases that we have also where we have administrative filings in
16 OCR. And it lists the recipients. It lists the associative
17 plaintiffs. And there is a central column that lists whether
18 an assurance of religious exemption letter has issued.

19 Q All right. And it basically shows that some of the
20 institutions attended by Plaintiffs already have assurances of
21 religious exemptions, but other institutions do not; is that
22 correct?

23 A Yes. As of the creation of this letter, that is true.

24 Q And so for the students on this list who are attending
25 institutions that do not currently have an assurance of

1 religious exemption -- those students don't really have any way
2 of knowing whether or not, or to what extent, their Title IX
3 rights are going to be protected by the Office of Civil Rights;
4 is that correct?

5 MS. SNYDER: Objection, speculation.

6 THE COURT: Overruled.

7 THE WITNESS: Yeah. They don't -- they would have no
8 way of knowing their -- at least with regard to what's listed
9 on this charge. There's no indication that an assurance
10 exists.

11 MR. SOUTHWICK: Thank you, Mr. Wills. No further
12 questions from Plaintiffs.

13 THE COURT: For the Intervenor, any questions?

14 MR. TUCKER: No questions from the Religious Schools.

15 MR. MILLER: You're on mute, Josh. You're on mute.

16 THE COURT: The individual -- again, please somebody
17 speak, because I started to hear somebody say there was no
18 objection. Just identify yourselves for the record. It was
19 the gentlemen with the blue tie. There you go.

20 MR. TUCKER: Yes. This is Ryan Tucker, counsel for
21 the Religious School Intervenor. I do not have any questions.

22 THE COURT: Thank you. Anyone else.

23 MR. MILLER: Counsel for CCCU does have some
24 questions. This is Nicholas Miller. And my colleague --
25 Joshua Prince -- is having trouble with his audio it seems.

1 THE COURT: Well, Mr. Miller, if you're going to
2 cross, go right ahead.

3 MR. MILLER: Well, I don't have the cross. My
4 colleague does -- Joshua Prince.

5 THE COURT: Oh, I thought you were going to cross.

6 MR. PRINCE: No. It's Joshua Prince. And he's
7 online, but he's trying to speak but cannot be heard.

8 THE COURT: He's mute. So...

9 MR. SOUTHWICK: Josh, it looks like you're not muted
10 on the system. So it might be your earbuds are not connected.

11 MR. MILLER: Can you use your computer microphone,
12 Josh? Disconnect the earbuds and...

13 MR. SCHAERR: Yeah. He's going to dial in and use a
14 phone for the audio. Apologies, Your Honor. We thought we had
15 this checked out earlier today.

16 THE COURT: Technology is fickle.

17 MR. SCHAERR: Indeed.

18 MR. PRINCE: Hello, this is Joshua Prince. May I be
19 heard?

20 THE COURT: Yes.

21 MR. PRINCE: I apologize, Your Honor. My microphone
22 worked this morning --

23 THE COURT: That's fine.

24 MR. PRINCE: -- as I believe Mr. Schaerr said.

25 Mr. Wills, can you hear me?

1 THE COURT: You're kind of muffled. So you're going
2 to need to slow down and articulate.

3 MR. PRINCE: Of course. Thank you, Your Honor.

4 Mr. Wills, can you hear me?

5 THE WITNESS: Yes, I can.
6

7 CROSS-EXAMINATION

8 BY MR. PRINCE:

9 Q All right. I only have a few questions. Thank you for
10 your time. My first question is that you mentioned that the
11 average time that it takes to evaluate an administrative
12 complaint is around 70 days; is that correct?

13 A That is correct. For fiscal year 2021, it was 73 days.

14 Q And is it fair to say that when you use the word
15 "average," it means that some complaints may take less than 70
16 days and some may take more than 70 days?

17 A That is correct.

18 Q And OCR handles thousands of such evaluations each year;
19 isn't that accurate?

20 A Yes, that is accurate.

21 Q So would it be consistent with your claim that the average
22 time to evaluate administrative claims -- to have 35 complaints
23 out of thousands take longer than the average?

24 A I'm sorry, sir. Could you restate that question?

25 Q Of course. This case involves 35 or so complaints out of

1 the thousands that OCR receives every year; is that accurate?

2 A That is accurate.

3 Q And would it be consistent with your claim -- that the
4 average time to evaluate such claims took around 70 days -- to
5 have this small subset take longer than the average?

6 A That is -- yes. That is a -- very definitely a
7 possibility, just given the fact that we wanted to ensure that
8 we approach these cases in a consistent manner. Yes. That may
9 take a little bit longer than average.

10 Q Okay. Now, to your knowledge, has OCR or the Department
11 of Education ever written a religious school's policy on
12 sexuality or gender?

13 A To my knowledge, OCR has never written a university or an
14 institution's policy on sexuality or gender.

15 Q Has it ever instructed such a school to draft a policy on
16 sexuality or gender, to your knowledge?

17 A No. It has never instructed a school to write -- or
18 guidance in writing that policy on sexuality or gender.

19 Q Has it ever instructed students or faculty at a religious
20 school to discriminate on the basis of sexual orientation or
21 gender?

22 A No, it has never done so.

23 Q I want to turn quickly to Government Exhibit 1, which you
24 reviewed both in your direct examination and in your
25 cross-examination, I believe. And I want to turn to page 12,

1 Section 109. Do you have that before you?

2 A Yes, I do.

3 MR. SCHAERR: Your Honor, with apologies again,
4 Mr. Prince just texted me and said his phone connection cut
5 out, and he's dialing back in.

6 THE COURT: All right.

7 MR. PRINCE: This is Mr. Prince. I apologies for
8 that.

9 BY MR. PRINCE:

10 Q Can you hear me, Mr. Wills?

11 A Yes, I can.

12 Q Okay. So I'm going to read from Section 109 on page 12.
13 It says, "OCR interprets its statutes and regulations
14 consistent with the requirements of the First Amendment, and
15 all actions taken by OCR must comport with First Amendment
16 principles." Did I read that correctly?

17 A Yes. You read that correctly -- that portion of
18 Section 109.

19 Q So is it fair to say that OCR will consider the First
20 Amendment rights of religious schools as well when determining
21 the applicability to Title IX?

22 MS. SNYDER: Objection, outside the scope and
23 speculative.

24 THE COURT: Sustained.
25

1 BY MR. PRINCE:

2 Q The last document we discussed on cross-examination with
3 Mr. Southwick was Government's Exhibit 21, where some religious
4 institutions do not currently have an assurance of exemption
5 letter; is that accurate? Do you remember that?

6 A Yes. According to the chart, Government Exhibit 21, at
7 least at the time the chart was created, there were some
8 institutions that did not have an assurance of religious
9 exemption letter.

10 Q And you're familiar with the text (indiscernible) as
11 written in the statute.

12 THE COURT REPORTER: I didn't hear that. It cut out.

13 THE WITNESS: Yes, I am.

14 BY MR. PRINCE:

15 Q And if I read the exemption, it says, "This section,"
16 meaning Title IX, "shall not apply to an educational
17 institution which is controlled by a religious organization.
18 The application of this subsection would not be consistent with
19 the religious tenets of such organization." Is that a fair
20 reading of the statute?

21 A That's a fair reading of my understanding of that
22 particular exemption.

23 Q Is it fair to say that the text statute does not require a
24 religious organization to seek OCR's approval before asserting
25 the exemption?

1 MS. SNYDER: Objection, Your Honor. I believe this
2 is outside the scope.

3 THE COURT: Sustained. And it's also -- it's not
4 helpful to the decision-maker, I would suggest.

5 MR. PRINCE: Understood, Your Honor.

6 BY MR. PRINCE:

7 Q We talked about one complaint that has been dismissed
8 under Section 108(j). Do you remember that?

9 A Yes, I do.

10 Q And is it fair to say that Section 108(j) allows a person
11 whose complaint has been dismissed to refile their complaint at
12 the close of that federal case?

13 A Yes. There is a provision in Subsection 108(j) that under
14 certain circumstances would allow for refiling of the complaint
15 with OCR.

16 Q Is it your understanding today that OCR dismissed its
17 complaint on the basis of the Title IX section that the student
18 could then sue the school for a violation of Title IX?

19 A If I understand the question, is it my -- I'm sorry,
20 Mr. Prince. Could you repeat the question for me?

21 Q Of course.

22 A I missed part of the first section.

23 Q Is it your understanding -- my apologies.

24 A I'm sorry.

25 Q Is it your understanding if OCR dismisses a student's

1 complaint filed with OCR, that the student could then sue the
2 school for violation of Title IX, even if their complaint was
3 dismissed?

4 A Yes, that is correct.

5 Q And in that proceeding, is it your understanding that the
6 student would be free to argue that the Title IX exemption is
7 invalid, either in general or as applied to the student's
8 complaint?

9 A It's my understanding, yes.

10 Q Thank you.

11 MR. PRINCE: Your Honor, I have no further questions
12 for this witness.

13 THE COURT: Thank you. Returning to the Government,
14 any redirect?

15 MS. SNYDER: No, Your Honor.

16 THE COURT: Thank you. May this witness be excused?

17 MR. SOUTHWICK: Nothing from Plaintiffs.

18 MS. SNYDER: Nothing more from Defendant Government,
19 Your Honor.

20 MR. TUCKER: Nothing from the Religious Schools
21 Intervenors. This is Ryan Tucker.

22 THE COURT: I'm assuming nothing for the other
23 Intervenor. Could somebody respond, please? I just want to
24 make sure everybody's been heard. And if they're not -- if
25 we're missing somebody's connection, I just want to know.

1 Because I'm going to excuse this witness as soon as I hear from
2 the last Intervenor.

3 MR. TUCKER: This is Ryan Tucker. Hopefully you
4 heard me moments ago. We have no questions for the witness.

5 THE COURT: All right.

6 Mr. Wills, thank you so very much. I'm sorry we took part
7 of your Friday evening. I appreciate very much your being back
8 here today. You're excused. And have a good rest of the day.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: For the Government, additional witnesses?

11 MS. SNYDER: No more witnesses for the Government,
12 Your Honor.

13 THE COURT: Thank you very much. We'll turn to the
14 Intervenor. And I understand there is a witness expected to
15 be called.

16 MR. SCHAERR: Yes, Your Honor. Intervenor CCCU would
17 like to call Dr. Mark Regnerus as an expert witness.

18 THE COURT: And is he on the screen? There I see a
19 new person. If you would just speak so -- just say your name.

20 MR. REGNERUS: Yes. Mark Regnerus from the
21 University of Texas.

22 THE COURT: Thank you. And if you would raise your
23 right hand.

24
25 M-A-R-K R-E-G-N-E-R-U-S,

1 called as a witness, having been first duly sworn, testified as
2 follows:

3
4 THE COURT: Thank you. For the court reporter,
5 please state your full name, spell your last, and then I'll
6 turn it over to -- I believe Mr. Schaerr's going to do the
7 direct. Correct?

8 THE WITNESS: Yes.

9 THE COURT: All right. Go ahead.

10 THE WITNESS: My name is Mark Daniel Regnerus. My
11 last name is spelled R-E-G-N-E-R-U-S.

12 THE COURT: Go ahead.

13 MR. SCHAERR: Thank you, Your Honor.

14
15 DIRECT EXAMINATION

16 BY MR. SCHAERR:

17 Q Dr. Regnerus, could you describe your educational
18 background?

19 A Yes. I was -- did college education at Trinity Christian
20 College, which at one point was a CCCU member. I'm not sure if
21 that's still the case. Graduated from there in 1993, followed
22 by a master's degree and a Ph.D. from the University of North
23 Carolina at Chapel Hill in the year 2000. After that I took a
24 position at Calvin College a year before moving to the
25 University of Texas in 2002 where I've been ever since.

1 Q Well, thank you. In what subject did you receive your
2 Ph.D.?

3 A Sociology.

4 Q Okay. And did you submit an expert report in this case?

5 A I did.

6 Q And let's display Exhibit 26 if we could. I believe
7 Mr. Prince is doing that. And, Dr. Regnerus, is Exhibit 26
8 your expert report in this case?

9 A Yes, it appears so.

10 Q And did you include with your report a current copy of
11 your CV?

12 A I did.

13 Q And is that also part of Exhibit 26? I believe it's on
14 the screen now. Dr. Regnerus, is this your CV on the screen?

15 A Yes.

16 Q Okay. And does it appear to be part of Exhibit 26?

17 A Looks like it.

18 Q Okay. Thank you.

19 MR. SCHAERR: Your Honor, we would move the admission
20 of Exhibit 26 as the expert report of Dr. Mark Regnerus.

21 THE COURT: Any objection?

22 MR. SOUTHWICK: Objection -- this is Paul
23 Southwick -- objection from Plaintiffs. I'd like to hear
24 further what Mr. Regnerus is being offered as an expert
25 witness. Based on his report, it appears that he's an expert

1 in numerous unrelated fields. And so I'd like to hear from the
2 Counsel's -- attorneys as to what exactly Regnerus is being
3 offered as an expert about.

4 MR. SCHAERR: And I'm happy to do that, Your Honor.

5 THE COURT: Then go ahead. Please do.

6 MR. SCHAERR: Okay.

7 BY MR. SCHAERR:

8 Q Dr. Regnerus, tell us where you work.

9 A Right. I work at the University of Texas at Austin in the
10 sociology department. I've been there 19 years.

11 Q And what is your title?

12 A Professor of Sociology.

13 Q Okay. And do you have tenure at the University of Texas?

14 A I have tenure. Yes.

15 Q And when did you achieve tenure?

16 A I think that was in 2007, or right around there.

17 Q Okay. And prior to that, what were your positions there?

18 A Assistant Professor of Sociology; then Tenure Associate
19 Professor; and then, about three or four years ago, promoted to
20 full Professor.

21 Q Okay. And in what areas -- what are the areas that you've
22 researched and published on?

23 A Right. I started out as a sociologist of religion, which
24 I've come back around to that on occasion. But around 2003 or
25 2004, I ventured into the study of relationship behavior.

1 Wrote a book on religious influences on adolescent sexual
2 behavior and attitudes and decision-making. Kind of aged with
3 those adolescents as they moved into young adulthood. Wrote
4 another book -- all four books are from Oxford -- on young
5 adult sexual decision-making. Moved into a little bit older
6 phase of young adulthood. That was the third book where I
7 explored, to some extent -- a minority part -- how the -- what
8 we call the sexual economics theory understands same-sex
9 behavior and decision-making -- relationship decision-making.
10 I've written --

11 THE COURT: Excuse me. Excuse me. Just for
12 purposes -- for the record, please explain what that
13 entailed -- what that research entailed.

14 THE WITNESS: These are mostly survey-based. I've
15 collected at least three large-scale nationally represented
16 surveys myself. But most of these books also entail an
17 interview component. So I kind of combine some of the
18 things -- the strengths that you have heard from on the
19 Plaintiffs' expert witnesses. Some of them are better at
20 surveys. Some of them are better at qualitative interviews.

21 THE COURT: I'm more interested in --

22 THE WITNESS: Some do both.

23 THE COURT: I'm more interested in what are your
24 topics of coverage.

25 THE WITNESS: In those books?

1 THE COURT: No. In that last -- you talked about
2 your most recent look at -- I believe you said sexual
3 economics.

4 THE WITNESS: Yeah. That was a -- that's a theory,
5 basically, that understands how -- what influences how people
6 fall in love, or not, date, have a sexual relationship
7 together, break apart, et cetera. It's kind of a macro theory
8 more in economics than in sociology.

9 BY MR. SCHAERR:

10 Q And, Dr. Regnerus, have you researched and published
11 articles on sexual orientation?

12 A I have. One was in 2012 on the adult children's outcomes
13 of -- outcomes of adult children who have grown up with a
14 parent who had been or was in a same-sex relationship. A
15 follow-up to that, later that year, I've written an analytic
16 piece evaluating one of Dr. Meyer's colleagues on influence of
17 antigay stigma on sexual minorities' mortality, and then, more
18 recently, a forthcoming piece on attitudes about -- American
19 attitudes about transitions -- I'm sorry, not transitions --
20 transgender medicine for adolescents.

21 Q Okay. And have you -- have you peer-reviewed articles and
22 studies on these issues?

23 A Yes, plenty.

24 Q Do you have an estimate of about how many articles and
25 studies you've peer-reviewed?

1 A Over the course of my career?

2 Q Yes.

3 A Probably 80 to 100.

4 THE COURT: So I want to go back and ask a question.
5 I didn't understand and you were kind of muffled.

6 THE WITNESS: All right.

7 THE COURT: So the published on sexual orientation
8 first was children's outcome of parents in same-sex
9 relationships. The second one I didn't quite understand. I
10 understood the third one.

11 THE WITNESS: Sure.

12 THE COURT: What was the second one?

13 THE WITNESS: Yeah. The second one -- that was a
14 study -- I think it was 2017-2018 -- basically a reevaluation
15 of Dr. Mark Hatzenbuehler, who's a common coauthor with
16 Dr. Meyer. He did an analysis of population-based data
17 connected to the National Death Index looking at how -- what he
18 called "antigay stigma" led to the -- about a dozen years of,
19 on average, lost life, basically -- diminished mortality
20 longevity among sexual minority populations in the United
21 States.

22 And I saw that, and I thought that looked a little awry.
23 So we pursued an analysis of that -- could not replicate the
24 key findings -- wrote an article about that. It was published.
25 And then, eventually, the same Journal of Social Science and

1 Medicine retracted Dr. Hatzenbuehler's article.

2 MR. SCHAERR: Your Honor, anything further -- any
3 other questions on --

4 THE COURT: So I just -- again, I'm just -- in terms
5 of expertise -- so the article that you published challenged a
6 thesis in an article written by Dr. Meyer that --

7 THE WITNESS: Dr. Meyer's colleague, not Dr. Meyer.

8 THE COURT: Whose name is what?

9 THE WITNESS: Mark Hatzenbuehler.

10 THE COURT: All right -- Mark Hatzenbuehler.

11 THE WITNESS: I believe he's at Columbia or Harvard.

12 THE COURT: And his theory was that there was
13 essentially an increase in mortality because of antigay stigma.

14 THE WITNESS: Yeah. So the fundamental question
15 was --

16 THE COURT: So hold on. Hold on.

17 THE WITNESS: Yeah. Sorry.

18 THE COURT: So by "diminished mortality," it would be
19 self-harm and suicide ideation. There was a --

20 THE WITNESS: No. It was just sort of the -- they
21 connected it to the National Death Index so they could track
22 when people who were participating in the survey had passed
23 away.

24 THE COURT: So what -- I've got it. So it's just
25 your --

1 THE WITNESS: All --

2 THE COURT: All moralities. All mortalities -- car
3 accident or suicide -- got it.

4 THE WITNESS: Absolutely.

5 THE COURT: And so you took on that study, and you
6 could not replicate the findings. And you published a
7 different analysis. And, at some point thereafter, the first
8 article was withdrawn.

9 THE WITNESS: That's correct.

10 THE COURT: All right. I just wanted to understand
11 that. Thank you.

12 THE WITNESS: Sure.

13 BY MR. SCHAERR:

14 Q Thank you, Dr. Regnerus. Dr. Regnerus, for which journals
15 have you done peer-reviewing of articles?

16 A Oh, I mean, I list a whole -- I don't know -- 10-12 lines
17 of them at the end of the CV. For this general topic, I've
18 reviewed them for American Sociological Review, American
19 Journal of Sociology -- the two best journals we have in the
20 discipline -- and Social Forces, Archives of Sexual Behavior,
21 Journal of Homosexuality, Gender & Society, and the list goes
22 on.

23 Q Okay. And can you briefly describe any additional
24 academic experience that you've had with sexuality issues?

25 A Additional academic experience...

1 Q Like perhaps teaching and advising people.

2 A God, I've -- I've advised a variety of students over the
3 years. Most of them have gone on to decent scholarly jobs. I
4 teach classes -- I teach social research methods to
5 undergraduate majors. I've had -- I've done that for a number
6 of years. I've probably taught that 20 times.

7 Q Mm-hm.

8 A I've taught sociology for religion courses, and I've
9 taught sort of a unique course for freshman several years ago.
10 I think it was something like "God, Sex, and Religion." Kind
11 of how these three things often come together in discussions
12 and in social observations. So I consider myself having a fair
13 degree of general knowledge in this area, particularly
14 methodological knowledge in the area.

15 Q Okay. And when you say "in this area," are you talking
16 about the intersection between religion and sexuality issues?

17 A Yes, and, you know, with regards to some of the
18 methodological issues that were raised in the reports.

19 Q Okay. And have you written any books in that area of the
20 intersection between religion and sexuality?

21 A I would say two of the books overlap that directly.

22 Q Mm-hm.

23 A The first and the last.

24 Q Okay. And so is it fair to say that, among other things,
25 you're an expert in the sociology of religion and sexual

1 behavior?

2 A Yeah. That -- I think I'm probably one of -- one of
3 several in the country. There's sort of like a -- that's
4 our -- as sociologists -- our sort of core domain.

5 Q Okay. Now, in preparation for your testimony today and
6 for your report, did you review anything?

7 A Yes. I reviewed the three expert witness reports and
8 other studies relevant to assessing those.

9 Q And when you say "the three expert witness reports," are
10 you referring to Doctors Coley, Meyer, and Wolff?

11 A Correct.

12 Q And those are the Plaintiffs' experts; right?

13 A Yes.

14 Q And did you review any other expert reports?

15 A Not -- you know -- not in this case. No.

16 Q Did you review a report from Dr. Shirley Hoogstra?

17 A Oh, yeah. I did review hers.

18 Q Okay.

19 A I'm not clear on what the status of that report is. I
20 mean, is it an expert report? The legal terms I don't quite
21 understand.

22 Q Okay. But you did review her report anyway?

23 A I did.

24 Q Okay. And can you briefly just characterize the studies
25 that you -- that you reviewed in preparing your expert report

1 without necessarily naming all of them?

2 A Characterizing the studies?

3 Q Yes.

4 A You know, like the survey -- like the REAP report -- I
5 took an extended look at that. I looked at a variety of other
6 survey-based analyses that were conducted during the COVID era.
7 I took a look at the Rutgers report that Hoogstra's document
8 makes reference to, which was conducted prior to the COVID era.
9 So -- I've looked at some CDC data. Yeah. I kind of tried to
10 get the territory for this particular topic.

11 Q Okay. And your report cites a number of those studies;
12 correct?

13 A Correct.

14 Q And what specifically were you retained to do in this
15 case?

16 A Primarily, I was retained to evaluate the three expert
17 witness reports and other relevant studies.

18 Q Okay. And what's your understanding of the core factual
19 issue that's addressed by the three Plaintiffs' expert reports?

20 A In my estimation, the core issue is whether CCCU-type -- I
21 call them this -- CCCU-type universities or colleges and their
22 policies exacerbate emotional health problems that LGBT
23 students there experience or not.

24 Q Okay. And when you say "CCCU-type" school, what
25 particular kind of religious colleges are you talking about

1 there?

2 A Right. Well, I don't have an exact sense of who's in and
3 who's out of those things. But they tend to be Protestant.

4 Q Mm-hm.

5 A They tend to be theologically conservative. And they tend
6 to have particular policies around relationship behavior that
7 hew to more -- I guess we call them traditionally Christian
8 understandings about marriage, about the body, about the
9 distinctiveness of men and women. Although, I strongly presume
10 that those policies in particular vary among the different
11 institutions based on their theological background -- that sort
12 of thing.

13 Q So is it fair to say that when you refer to "CCCU-type"
14 schools, you're talking about schools that generally try to
15 adhere to the traditional Christian biblical understanding of
16 sexuality?

17 A Yeah, insofar as we have a grasp of that. I mean,
18 Christianity is a big tent, of course.

19 Q Mm-hm.

20 A But these are more theologically conservative schools,
21 which would be historically more attuned to Christian teaching
22 on this domain over the years.

23 Q Okay. And based on your review of the expert reports and
24 other studies in this case, and without telling me yet what
25 your opinion is, have you reached an opinion on the factual

1 issue addressed by the Plaintiffs' experts here?

2 A Yes, I have.

3 Q Okay.

4 MR. SCHAERR: Well, Your Honor, based on his training
5 and experience, and his review in this case, I move that the
6 Court admit Dr. Regnerus as an expert in the sociology of
7 religion and sexual behavior.

8 MR. SOUTHWICK: Your Honor, this is Paul Southwick
9 for Plaintiffs. I'd like to do some cross on Mr. Regnerus'
10 qualifications in this respect.

11 THE COURT: Fine. Go ahead.

12
13 CROSS-EXAMINATION

14 BY MR. SOUTHWICK:

15 Q Mr. Regnerus, have you previously testified in a court
16 proceeding?

17 A I have.

18 Q And, Mr. Regnerus, did you testify -- have you testified
19 in court proceedings on behalf of parties defending same-sex
20 marriage bans?

21 A Same-sex marriage bans? Yes. At least it was on -- I
22 think it was an adoption case, frankly.

23 Q Mr. Regnerus, is that case that you're recalling the case
24 in Michigan -- a federal court case in Michigan?

25 A Correct.

1 Q And that would be the DeBoer v. Snyder?

2 A That would be DeBoer v. Snyder.

3 Q Aw, thank you. I'm going to pull up an opinion in that
4 case. Are you familiar with the Judge's opinion in this case?

5 A I have read it.

6 Q And are you familiar with the reference to your -- you
7 testified as an expert witness in that case; is that correct?

8 A Correct.

9 Q And --

10 A Several of us did.

11 Q All right. And some of what the testimony that you
12 provided related to that -- that study that you referred to
13 from 2012 regarding same-sex parents and parenting --

14 A Mm-hm.

15 Q -- is that correct?

16 A Mm-hm. Correct. Well -- yeah.

17 Q And can you describe what -- the general outcome of that
18 study as you provided that testimony to the federal court?

19 MR. SCHAERR: Your Honor, I'm going to object to this
20 line of questioning. It really has nothing to do with his
21 testimony on the issues of this case.

22 THE COURT: Overruled.

23 THE WITNESS: Could you restate the question, please?

24 BY MR. SOUTHWICK:

25 Q Mr. Regnerus, didn't you testify in federal court

1 regarding that 2012 sexual orientation and parenting study?

2 A Yes, that's correct.

3 Q And hasn't that study been widely criticized in academic
4 circles?

5 A It's been widely criticized. At the same time, it's
6 factually correct. It has not been retracted, unlike
7 Mr. Hatzenbuehler's article I evaluated. And it has since led
8 to a variety of studies that uphold the same conclusions that I
9 reached. Not all of them. Fundamentally, this domain boils
10 down to disputes about measurements and disputes about
11 analytical decision-making -- very technical stuff.

12 Q And, Mr. Regnerus, do you stand by the methodology and
13 conclusions of that study?

14 A I do.

15 Q Now, Mr. Regnerus, in that case -- DeBoer v. Snyder -- I'm
16 going to read the Judge's -- the Federal Judge's opinion.
17 After you provided expert testimony, the Court states, "The
18 Court finds Regnerus' testimony entirely unbelievable and not
19 worthy of serious consideration." Do you agree with that
20 statement, or do you disagree?

21 A I don't agree with that statement.

22 Q The Court goes on to describe the study and says, "The
23 Court finds this testimony unbelievable," and goes on -- it
24 states, "It's no wonder that the NFSS" -- which is a shorthand
25 for that study; is that right?

1 A That's correct.

2 Q "Has been widely and severely criticized by other
3 scholars, and that Regnerus' own Sociology Department at the
4 University of Texas has distanced itself from NFSS, in
5 particular, and Dr. Regnerus' views in general, and reaffirmed
6 the aforementioned American Psychological Association position
7 statement." Is that right?

8 A Well, the Sociology Department didn't distance itself.
9 The Sociology Department Chair, making a decision without
10 consulting the executive committee, a member of which I believe
11 I was at the time, rendered that decision, speaking so-called
12 on behalf of the Department. But that was her opinion.

13 Q And, in fact, the Department Chair issued a statement
14 saying, "Dr. Regnerus' work had been cited inappropriately in
15 efforts to diminish the civil rights and legitimacy of LGBTQ
16 partners and their families." Do you recall that?

17 A Yeah. I believe that was part of the letter -- her
18 opinion.

19 Q Do you agree with that assessment?

20 A I disagree with that assessment.

21 Q But, in fact, you continue to stand by the study. And is
22 one of the conclusions of the study essentially that same-sex
23 parents provide suboptimal parenting environments for children?

24 A I don't believe I said that in those words. I believe --

25 Q All right. Well, could you tell us what the central

1 conclusions of your study were?

2 A The central conclusions --

3 MR. SCHAERR: Your Honor, I have to object again.
4 This is so far afield from what Dr. Regnerus is doing in this
5 case.

6 THE COURT: It goes to his value as an expert. And I
7 find it helpful. And I will overrule that objection.

8 MR. SCHAERR: Okay.

9 THE WITNESS: All right. So could you just repeat
10 that last question for me, please?

11 BY MR. SOUTHWICK:

12 Q Yeah. Mr. Regnerus, that study that was so thoroughly
13 criticized by the Court -- can you tell us what the general
14 conclusion of that study was?

15 A Right. I evaluated about 15 different family structure
16 types during adolescence, which is itself a challenge, because
17 American households exhibit a lot of turnover these days. Two
18 of those household types were types where there was a mother or
19 a father who had been in a same-sex relationship at some point
20 during the child's growing-up years. Right? These are
21 children who were 18 to 39, as adults, reflecting upon their
22 growing-up years back in -- when I fielded this in 2011.

23 So we looked across that whole domain of both assessments
24 of the present -- like current employment, marital status,
25 family well-being -- and also back about their past --

1 right? -- their growing-up years, their assessments of their
2 relationship with their mother and their father, family
3 dynamics -- and came to the conclusion that those kids who grew
4 up in that kind of a household, that had a parent who had been
5 in a same-sex relationship of unclear duration and unclear
6 arrangement, fared worse on roughly 15 to 25 of the 40
7 different outcomes we studied when compared to children who
8 were raised in stably married mother-and-father households --
9 also compared to a variety of different kinds of households --
10 single-mother households, single-father households,
11 stepparenting households, adopted before age two, adopted after
12 age two. The reach of that -- the ability of that study was
13 significant.

14 Now, you're right. It raised a lot of -- both attention
15 and irritation. And, yet, some people say, "Oh, it's been
16 debunked." Like it's debunked? But it's still in print.
17 Because there's nothing factually wrong about what appears
18 there. People didn't like --

19 Q Mr. Regnerus --

20 A -- the conclusions.

21 Q Mr. Regnerus, isn't the true that the journal that printed
22 it issued an audit, and the audit found that it should never
23 have been printed in the first place?

24 A The audit -- I'd be happy to talk about that. The audit,
25 which is an almost unheard of experience, occurred because the

1 editor of the journal seemed sort of paralyzed by the criticism
2 that he was getting. So he appointed someone who claimed to be
3 a neutral party, who had been a friend of mine for a fair
4 number of years, who's a sociologist of religion, by the way --
5 not a sociologist of sexual behavior per se -- to audit the
6 entire process. And he concluded at the end of the process --
7 he didn't like the fact that it was published -- but he didn't
8 see radical anomalies in the review process if that -- you
9 know -- to characterize it.

10 And so, I mean, I was stunned that such a thing would
11 happen. And -- so it remained in print. The editor felt so
12 harassed -- he was sued by someone in New Jersey in Florida
13 court -- and retired prematurely and passed away not that long
14 ago. And I'm very sorry for his experience. At the same time,
15 the article is not untrue.

16 Q Mr. Regnerus, just to clarify, regardless of the
17 conclusions of the study, the Court in DeBoer took issue with
18 the methodology of the study; is that correct?

19 A What do you mean "the Court"? The Judge?

20 Q The Judge.

21 A Right. Insofar as a Judge is expected to really
22 understand the nuances of regression methods and the use of
23 control variables.

24 Q And, Mr. Regnerus, are you aware that the Sixth Circuit
25 Court of Appeals, in considering the appeal in this matter,

1 likewise reaffirmed the statements of the District Court
2 regarding your study and your testimony?

3 A I'm not aware of that at all. I just know they overturned
4 the decision. That's all.

5 Q Mr. Regnerus, are you a clinical psychologist?

6 A I'm not.

7 Q Are you an expert in the field of mental health outcomes
8 for LGBTQ youth?

9 A Not an expert. Expert in the methodology of some of the
10 studies in this domain.

11 Q And, Mr. Regnerus, are you an expert on religious liberty
12 issues or the religious underpinnings of Council for Christian
13 College and Universities' code of conduct statements?

14 A I'm not sure who is an expert on those things. I'm a
15 sociologist of religion who typically studies large-scale data
16 on the religious influences on youth, young adult behavior,
17 relationship behavior, et cetera.

18 MR. SOUTHWICK: Your Honor, Plaintiffs move to
19 exclude the portions of Mr. Regnerus' expert report that deal
20 with clinical psychology, LGBT mental health outcomes, sexual
21 orientation change efforts, gender identity change efforts, as
22 well as separately move to exclude Mr. Regnerus' testimony
23 regarding methodology, as he has previously been found by a
24 Federal Court that his methodologies themselves are
25 unbelievable and not worthy of serious consideration.

1 MR. SCHAERR: Your Honor, may I conduct some
2 follow-up questioning?

3 THE COURT: Certainly.

4 MR. SCHAERR: Thank you.
5

6 DIRECT EXAMINATION (Continued)

7 BY MR. SCHAERR:

8 Q Dr. Regnerus, what was the -- what did the Sixth Circuit
9 ultimately do with the District Judge's decision in the DeBoer
10 case?

11 A They reversed it on a two-to-one decision.

12 Q Okay. And you mentioned earlier that, in that case, you
13 had -- you had relied upon and testified about a 2012 study on
14 family structures; is that correct?

15 A Mm-hm.

16 Q And did your -- did your analysis of that -- did your
17 analysis of that study play any role in your analysis in this
18 case?

19 A No.

20 Q Okay. Does your work on family structures at issue with
21 that case have any bearing on your analysis of the issues in
22 this case?

23 A They don't.

24 Q Okay. You mentioned earlier that you're not a clinical
25 psychologist; correct?

1 A That's correct.

2 Q Are you experienced in assessing psychological studies?

3 A Yes.

4 Q Okay. And can one be an expert in assessing psychological
5 studies without being a clinical psychologist?

6 A Absolutely. There are plenty of them out there who do
7 exactly that.

8 Q Okay. And you would consider them experts in that field?

9 A Yes.

10 Q Okay.

11 A There's plenty about contemporary psychology that has been
12 criticizable over the last 15 to 20 years.

13 Q And, Dr. Regnerus, do you recall reading the
14 Sixth Circuit's opinion in the DeBoer case?

15 A I think I have read it at one time.

16 Q Okay. Do you recall seeing anything at all in that
17 opinion about criticizing your study?

18 A No. I was -- if it exists, I was unaware of it until a
19 moment ago.

20 Q Okay.

21 MR. SCHAERR: Well, Your Honor, obviously we oppose
22 the Plaintiffs' motion to exclude any portions of Dr. Regnerus'
23 testimony. We think he's fully qualified to express his
24 opinions in this case. And we believe that his opinions will
25 be helpful to the Court. And obviously he's simply responding

1 to the three expert reports and the two -- the many hours of
2 expert testimony that we've heard from the Plaintiffs.

3 THE COURT: Anything else?

4 MR. SOUTHWICK: Nothing further from Plaintiffs.

5 MR. TUCKER: Your Honor, Ryan Tucker for the
6 Religious Schools. We certainly do not object to the expert
7 testimony of this individual.

8 THE COURT: So I thank you for the follow-up in the
9 examination. He will be acknowledged as an expert. But his --
10 I will look carefully at his opinions. And it will go to
11 admissibility and weight to be given to it and expertise. And,
12 you know, I do understand the distinctions in these studies.
13 And I do understand the distinction between a sociologist and a
14 psychologist. So I think I can weigh and balance that in this
15 opinion. But I appreciated the record that was made. Thank
16 you. Go ahead.

17 MR. SCHAERR: Thank you, Your Honor. We would also
18 move to admit Dr. Regnerus' expert report as Exhibit 26.

19 THE COURT: Again, his report will be admitted. The
20 Court retains and will retain the ability to evaluate that
21 report and to the extent it goes to weight and with regard to
22 how that report is used will be, again, looked at by the Court
23 over against the areas of expertise of this particular witness.

24 MR. SCHAERR: Understood, Your Honor. Thank you.

25 MS. SNYDER: Your Honor, this is the Government

1 Defendants. Just -- I understand the Court's ruling. Just for
2 the record, we'd like to state an objection to the admission of
3 the report on hearsay. I understand Your Honor has already
4 taken it into evidence.

5 THE COURT: Right.

6 MS. SNYDER: Thank you.

7 MR. SCHAERR: May I proceed, Your Honor?

8 THE COURT: Yes, please.

9 MR. SCHAERR: Thank you.

10 BY MR. SCHAERR:

11 Q Dr. Regnerus, are you aware of the generation study that
12 was conducted by Dr. Meyer and discussed in his testimony on
13 Thursday?

14 A Yes, I am.

15 Q Okay. Can you briefly review for us what that study found
16 with respect to those members of the LGBT community in the
17 youngest cohort that Dr. Meyer looked at?

18 A Right. The generation study that -- in the particular
19 article that Dr. Meyer had coauthored -- noted statistically
20 higher suicide attempts across a lifetime -- higher reports of
21 everyday discrimination, higher psychological distress, greater
22 internalized homophobia all among the youngest cohort
23 18-to-25-year-olds -- in the generation study at the same time,
24 as they report lower levels of physical assault, lower levels
25 of sexual assault, less experience with being robbed,

1 threatened with violence.

2 This is unique in some ways to see, across a lifetime,
3 higher rates of reporting of these all the while happening
4 while American society has become more secular; demonstrated
5 less stigma on average; and the social support for LGBT
6 population, social support for same-sex marriage, et cetera,
7 has grown.

8 So Dr. Meyer's study reports that this -- youngest LGBT
9 adults -- even while they experience higher connection with the
10 LGBT community and no difference in felt stigma -- that the
11 situation remains that they seem in psychologically greater
12 distress across a variety of outcomes compared to their older
13 LGBT peers or cohorts in this study.

14 Q Okay. And, Dr. Regnerus, is that -- is that group or that
15 cohort that Dr. Meyer looked at -- is it -- is it limited to
16 members of the LGBT community who attend religious colleges?

17 A No. I think the -- that's without regard to like
18 attendance in college at all.

19 Q So that's in the general population; is that correct?

20 A As far as I can tell, yes.

21 Q Okay. Now, do these findings, in your opinion, have
22 relevance to this case beyond the opinions that Dr. Meyer
23 expressed last week?

24 A Could you restate that question?

25 Q Do these findings from Dr. Meyer have relevance in this

1 case beyond the opinions that Dr. Meyer expressed in his
2 testimony last week?

3 A Yeah. Yeah, I think so. I mean, it suggests that
4 previous eras of LGBT students at Christian colleges and
5 universities were probably apt to have understood the unique
6 rules about sexual relationships, et cetera, as the norm, and
7 either they would -- abided by them or surreptitiously thwarted
8 them or simply elected to avoid them -- the colleges -- in the
9 first place, selecting universities that didn't have such
10 rules.

11 Q Okay. And does Dr. Meyer's analysis suggest that LGBT
12 students or college-age LGBT students are struggling in other
13 settings besides religious college?

14 A Yes.

15 Q Okay.

16 A Yeah. The evidence and the generations study declares so.

17 Q Okay. So it's a generalized problem?

18 A It seems to be. And it seems to be -- crossed different
19 kinds of data sets -- different data collection. And I cited
20 several studies, including the Rutgers study that Hoogstra had
21 mentioned.

22 Q Okay. Well, let's -- and let's move into some of that --
23 some of that data. Are you aware of any data to suggest that
24 the struggles faced by LGBT young people are more prevalent at
25 religious colleges than they are at secular colleges?

1 A No. Having reviewed the REAP study, which is exclusive to
2 CCCU-types of colleges, you see clear difference between LGBT
3 students and non-LGBT students. But what we don't get from
4 that is a sense of comparison outside of those environments.
5 So I took it upon myself to examine some of the more recent
6 studies that focused on LGBT college students and were at other
7 kinds of institutions. And --

8 Q Okay.

9 A -- they've seemed to be faring no better than the students
10 did at -- in the REAP study -- and sometimes worse.

11 Q So you say the students in secular colleges are faring no
12 better than the students in the --

13 A Right.

14 Q -- in the REAP survey?

15 A Yeah, it appears so.

16 Q Well, let's -- and let's dig into that a little more. I'm
17 going to show you what's been marked as CCCU Exhibit 1. Or
18 rather Mr. Prince is going to show you. Okay. Do you
19 recognize this report, Dr. Regnerus?

20 A I do. I've read it.

21 Q Okay. And is this the REAP survey that you mentioned
22 earlier?

23 A It is.

24 Q Okay. And what exactly did the REAP survey review?

25 A They reviewed a variety of outcomes and behaviors, et

1 cetera, as well as experiences -- you know, experiences of
2 stigma, experiences of discipline -- and all of it in the CCCU
3 types of colleges and universities -- and compared LGBT
4 students versus non-LGBT students. Everybody there is at one
5 of these kinds of CCCU-type of schools.

6 Q Okay. Thank you.

7 MR. SCHAERR: Your Honor, we would move the admission
8 of CCCU Exhibit 1.

9 THE COURT: Objections? Anything else?

10 MR. SOUTHWICK: No objections from Plaintiffs.

11 MS. SNYDER: No objections from Government
12 Defendants, Your Honor.

13 MR. TUCKER: And no objections from the Religious
14 Schools.

15 THE COURT: Thank you. It will be received.

16 MR. SCHAERR: Thank you, Your Honor.

17 BY MR. SCHAERR:

18 Q And do you recall whether the REAP survey mentioned the
19 rates at which LGBT students were disciplined for violations of
20 the school's sexuality policy?

21 A I do.

22 Q And do you recall what those rates were?

23 A Well, in general -- this is among -- there was --
24 5 percent of respondents to the REAP report stated that they
25 had ever faced disciplinary action from their college or

1 university -- right? -- 5 percent. Among that 5 percent --
2 small minority -- 12 percent reported the sexual code of
3 conduct as a reason for such an action.

4 So it means like if -- 0.05 times 0.12 -- you get 0.006 of
5 1 percent of all REAP survey respondents, or 6 out of every
6 1,000. There was 3,001 kids in the study. So we're talking
7 about 18 students out of 3,000 who were disciplined for this
8 particular reason.

9 Q Okay.

10 A So, you know, for context, the REAP survey administrators
11 point out that 10 percent of respondents self-identify as a
12 sexual minority or, if you want to be more generous, 12 percent
13 or even 30 percent, depends on how you measure it. And so
14 we're talking about a lot of students here. Right?
15 Potentially 300 to 360 to make it even 900 out of the 3,000
16 total in the study. And we're talking about, you know, 18
17 students total who were disciplined by failing in -- with
18 regard to the sexual code of conduct. Which having been a
19 student in that environment myself, you know, a lot of people
20 don't like the sexual code of conducts -- right? -- and chafe
21 against them. So it's a small number, given the focus that
22 we've talked about on -- or heard about on discipline.

23 Q Okay. So is it fair to say, based on your review of the
24 REAP survey, that discipline of LGBT students based on the
25 school's sexuality policy is rare?

1 A Yes.

2 Q Okay. Let's pull up what has been marked as CCCU
3 Exhibit 2. And I'll ask you, Dr. Regnerus, if you recognize
4 this document.

5 A I do.

6 Q Okay. And tell us what that is.

7 A It's a sort of -- Rutgers University-based reports
8 comparing heterosexuals and what they call queer-spectrum
9 students across a variety of outcomes. I think it was fielded
10 in 2017. I mean, if it's published in 2018, I think it was
11 2017. I'm not entirely sure -- pre-COVID era though.

12 Q Okay. And what did that study look at?

13 A It looked at questions about like victimization, mental
14 health, basic emotional health, substance use, a variety of
15 things.

16 Q Okay. And did it focus on LGBT students?

17 A Yes. And compared to, you know, heterosexual students, it
18 was not -- if I'm not mistaken -- it was not -- yeah -- I guess
19 this was students only. But it was not at like CCCU-type
20 schools. Although there may be Christians among them, but it's
21 not a CCCU-based survey.

22 Q Okay. So it's a study of LGBT college students at secular
23 universities; is that fair?

24 A That's fair.

25 THE COURT: At the only public university in New

1 Jersey.

2 THE WITNESS: That's right. College of New Jersey --
3 no? That's also public.

4 THE COURT: Pardon?

5 MR. SCHAERR: Yes.

6 THE WITNESS: The College of New Jersey is also
7 public.

8 THE COURT: But it's considered the only public
9 university in New Jersey.

10 THE WITNESS: Okay.

11 THE COURT: The main university.

12 MR. SCHAERR: Your Honor, we would move the admission
13 of CCCU Exhibit 2.

14 MR. SOUTHWICK: Plaintiffs have no objections to any
15 of CCCU's exhibits.

16 MS. SNYDER: No objection, Your Honor.

17 THE COURT: It will be received.

18 MR. SCHAERR: Thank you, Your Honor.

19 BY MR. SCHAERR:

20 Q Well, Dr. Regnerus, let's talk for a minute about what we
21 learned from the Rutgers study compared with the REAP survey.
22 Now, what, if anything -- and you've compared those two
23 studies; correct?

24 A I did.

25 Q And what, if anything, does that comparison show about the

1 mental health of LGBT students at religious colleges compared
2 with LGBT students at secular schools?

3 A Right. If we're going to evaluate them side by side, in
4 different kinds of samples at different kinds of times, my read
5 on it is that LGBT students who are in non-CCCU schools report
6 at least as high, if not higher, rates of emotional health
7 challenges, depression, anxiety, higher suicidality, if I
8 recall.

9 There's more outcomes in the Rutgers study than the REAP
10 study. But in terms of victimization -- you know -- notably
11 higher alcohol use -- higher -- which kind of makes sense. You
12 know, there's probably alcohol policies at CCCU schools. But
13 there just seems to be a little -- notable more vulnerability
14 in non-CCCU schools.

15 Q Okay. So is it fair to say that to the extent the
16 outcomes in the two studies can be compared, LGBT students at
17 CCCU-type colleges fared no worse and, on many measures, better
18 than their counterparts at secular schools?

19 A Yeah, that's correct.

20 Q Okay. So what effect, if any, does the fact that -- well,
21 let me back up. Is it your understanding that the REAP review
22 was conducted during COVID and during the shutdowns --

23 A Yes.

24 Q -- associated with that?

25 A According to the REAP document, it was fielded during the

1 COVID era.

2 Q Okay. And what effect, if any, does that fact have on
3 this comparison between the REAP survey and the Rutgers study?

4 A Typically speaking, most data collection efforts we saw
5 during the COVID era of anybody, LGBT included, noted higher
6 anxiety rates, higher depression rates, more self-harm, et
7 cetera, during the COVID era. The REAP survey was fielded
8 during the COVID era -- even though, you know, you have to look
9 at the dates in which it was fielded -- it was not admitted in
10 the text of it if I'm not mistaken -- such that I would say the
11 REAP survey should frankly be an overestimate of kind of
12 problems among students in CCCU schools, LGBT or not, given
13 that it was fielded during a sort of pandemic when we widely
14 recognized that young people were having above-average
15 difficulty. And, frankly, before that, they were not in great
16 shape either.

17 I think it's fair to say that young adults in the United
18 States are in some measure of crisis -- particularly LGBT
19 students -- yes -- but it's wide. And since the REAP study was
20 fielded during COVID, that would, on average, if it had been
21 fielded earlier, probably add some degree of additional levels
22 of depression, anxiety, et cetera to the results that is --
23 that's not revealed now. So I took the liberty of trying to
24 find what else -- what other studies have been fielded during
25 the COVID era. Because that does reflect sort of a more

1 pronounced experience of troubles.

2 Q And we'll come to those in just a minute. But just if we
3 can stay on a REAP report for a minute longer.

4 A Sure.

5 Q You mentioned that it was conducted during the COVID era.
6 If it had been conducted in more normal times, would you have
7 expected to see a -- would you expect -- would you have
8 expected to see students at CCCU schools do better or worse, in
9 general, compared to students at secular colleges?

10 A If COVID had not occurred, and we weren't paying any
11 attention to the sampling dates of these, yeah, that should
12 remain stable in the sense of I would anticipate the nature and
13 dynamics of a lot of CCCU schools offering some degree of
14 generalized protection, especially from like alcohol-related
15 things, violence-related things. And so those rates should be
16 lower still independent of COVID.

17 Q Okay. So the rates would have been lower still in the
18 CCCU schools; is that what you're saying?

19 A Right. Certainly in the way of anxiety. Anxiety took a
20 spike during the COVID era.

21 Q Okay. Now, are the conclusions you drew from comparing
22 the REAP report and the Rutgers study consistent with what you
23 found elsewhere in the literature that you just mentioned?

24 A Yes. Yeah.

25 Q And tell us about that.

1 A Right. So I took a look around at what else had been
2 fielded during the COVID era. It was a unique opportunity for
3 data collection -- as they call it, a "natural experiment."
4 There's a survey by Vanderbilt University researchers -- about
5 477 LGBT college students ages 18 to 25 -- same as in the
6 generation study, which was not exclusively college students --
7 that was in April-June 2020. In that, 61 percent of the
8 students recorded frequent mental distress, 65 percent reported
9 anxiety, 60 percent reported major depressions --

10 Q Okay. And these are --

11 A -- in particular.

12 Q Are these at secular universities?

13 A Yeah, I believe so. Yeah. It was across a variety of
14 universities if I'm not mistaken.

15 Q Okay.

16 A They --

17 Q And are those --

18 A Those two kind of compare -- sorry -- go ahead.

19 Q Are those rates that you mentioned higher or lower than
20 the rates and psychological difficulties as reported in the
21 REAP report?

22 A On some things they're comparable, and some things they're
23 lower in terms of like -- well -- let me rephrase that. There
24 are different kinds of measures. There are clinical
25 measures -- markers -- right?

1 Q Mm-hm.

2 A For example, 61 percent said they had more frequent mental
3 distress, which was measured as 14 or more days per month of
4 not good mental health. 65 percent reported anxiety, which is
5 sort of a generalized anxiety disorder -- right? -- a clinical
6 term. 60 percent report a major depression based on patient
7 health questionnaire.

8 You go to REAP, you have comparable numbers, but they
9 typically -- they're self-reports of ever having experienced
10 depression -- okay? -- which is not current to the situation
11 necessarily -- like ever in, you know, your lifetime having
12 experienced depression.

13 64 percent report ever having experienced loneliness. By
14 the way, compared to the Rutgers, I think it was 70 to
15 79 percent had -- of LGBT students -- had experienced
16 loneliness. But 59 percent of the other -- rest of the
17 sample -- experienced loneliness. College can be a lonely
18 experience.

19 73 percent had reported anxiety. But these are ever --
20 they're just simple self-reports about ever having experienced
21 these things, which is decidedly different than sort of a
22 clinical marker in the present.

23 Q Mm-hm.

24 A So when you see that they're comparable numbers, but one's
25 a clinical marker in the present -- the Vanderbilt study -- and

1 one is ever having experienced this self-report -- in the REAP
2 survey -- I'm thinking that the Vanderbilt study is picking up,
3 on average, worse situations in the present than the REAP
4 survey has picked up in the present, although they ask about
5 the past, largely speaking.

6 Q Okay. So you recall some discussion in the -- in --
7 previously in this hearing about a 2016 study by Dr. Wolff.

8 A Correct.

9 Q Do you recall discussions of that study? Now, are the
10 conclusions from your comparison consistent with that 2016
11 Wolff study?

12 A Right. Well, they're kind of different studies. His is
13 largely qualitative -- interview-based.

14 Q Mm-hm.

15 A The ones I'm referring to are more survey-based analyses.
16 But they're coming from comparable kinds of samples or
17 populations -- CCCU-type schools.

18 Q Mm-hm.

19 A So Dr. Wolff, among other conclusions, remarks in that
20 significantly fewer symptoms of depression and social anxiety
21 were detected in the schools that he's focused on -- the
22 CCCU-type schools -- than compared to Catholic and mainline
23 Protestant colleges and universities, both of which tend to
24 have far more progressive behavioral policies and norms.

25 He seemed puzzled by that finding, yet, he acknowledged

1 that religion can offer a substantial amount of comfort and a
2 source of community. So I think they are somewhat comparable
3 but, you know, quite different time frames.

4 Q Mm-hm.

5 A I don't believe -- you know -- I think that this was --
6 Wolff was well before COVID --

7 Q Right.

8 A -- and is a different kind of data collection effort.

9 Q Okay. But is it fair to say that the overall direction of
10 the Wolff study is similar to the basic conclusion that you
11 reached based on comparing the REAP review and the Rutgers
12 study?

13 A Yes.

14 Q Okay. And I believe the Wolff 2016 study has already been
15 introduced as -- I think as Exhibit 6.

16 MR. SCHAERR: Does that sound right to you, Paul?

17 MR. SOUTHWICK: Gene, are you talking about
18 Dr. Wolff's expert report?

19 MR. SCHAERR: No, his 2016 study. Maybe I'll just go
20 ahead and move that into -- let's see -- Josh, can you show
21 that study to us with the exhibit number? Yeah. I understand
22 that is CCCU Exhibit 6. Why don't we put that on the screen
23 and have Dr. Wolff identify it -- I'm sorry -- Dr. Regnerus.

24 BY MR. SCHAERR:

25 Q Dr. Regnerus, is this the 2016 Wolff study that we've been

1 discussing?

2 A I believe so, yes.

3 MR. SCHAERR: And, Your Honor, we would move the
4 admission of that study.

5 THE COURT: Any objection?

6 MS. SNYDER: No objection from the Government
7 Defendants, Your Honor.

8 MR. SCHAERR: Okay. Thank you.

9 THE COURT: No other objections? All right.

10 MR. TUCKER: No objections, Your Honor.

11 THE COURT: Received.

12 MR. SCHAERR: Okay.

13 BY MR. SCHAERR:

14 Q Well, let's move on now and briefly discuss the theology
15 and related practices that are embraced by Christian colleges.
16 Is it your understanding that religious colleges often have
17 policies on sexuality and gender?

18 A Yes.

19 Q And do some of them forbid sexual activity outside of a
20 man-woman marriage?

21 A I would bet that most of the CCCU schools do so.

22 Q Okay. And it's fair to say that would be what you would
23 view as probably a characteristic of what you've called the
24 CCCU-type schools; is that right?

25 A Correct.

1 Q Okay. And based on your understanding, what is it that
2 informs those policies?

3 A Right. Well, they're mostly from the Protestant tradition
4 of Christianity. And, historically, notions about Christian
5 sexuality have been -- long been fairly narrowly defined. To
6 use the modern terms, they are typically heteronormative in
7 their approach to illicit relationships. Their theological
8 anthropology -- to use that term -- or theology-informed
9 anthropology -- the understanding of the human person -- is
10 probably what we'd call cisnormative. Right? It's focused on
11 males and females, men and women. And these have long been
12 utterly uncontroversial.

13 Now, the policies have long been probably chafed against,
14 as I mentioned before, but not contested in such a live and
15 systematic manner.

16 Q Okay.

17 A So -- I'm sorry. I can --

18 Q Well, and -- go ahead.

19 A All right. So, I mean, Christian commitments, theological
20 commitments of the body, the meaning of sex, sort of the point
21 of relationships, the significance of marriage and child
22 bearing are very old. They differ somewhat across these
23 different kinds of schools by denomination, et cetera. But
24 there's kind of a consistent strain to them, I think we can
25 agree.

1 Q Okay. And are those beliefs and policies typically
2 grounded in the Bible or other sources?

3 A In the CCCU, they are typically grounded in the Bible and
4 interpretations thereof.

5 Q Okay. And have you formed an opinion, as a sociologist
6 who studies religion, on what would happen to religious
7 colleges that adhere to this theological framework if they
8 tried to make their policies more accommodating towards
9 homosexual and maybe gender-transitioning behavior?

10 A Right, I have.

11 MR. SOUTHWICK: Objection, lack of foundation,
12 speculation.

13 MR. SCHAERR: It's within his expertise and part of
14 his analysis.

15 THE COURT: I'm going to sustain the objection.

16 BY MR. SCHAERR:

17 Q Okay. So you were -- we discussed that you're a
18 sociologist who studies religion. Correct, Dr. Regnerus?

19 A That is correct.

20 Q Okay. And we've discussed the theological framework on
21 which these -- these policies on what you called "CCCU-type
22 schools" are based; is that right?

23 A Right.

24 Q And you've been a professor at a CCCU school; right?

25 A Briefly, yes.

1 Q At Calvin College?

2 A Correct.

3 Q And so you have some direct experience with an institution
4 that follows that framework; correct?

5 A Correct.

6 Q And I think you told me that you were a student at that
7 kind of a college as an undergraduate.

8 A I was.

9 Q Okay. So you have extensive personal experience with this
10 kind of institution --

11 A I do.

12 Q -- is that fair?

13 A Yes.

14 Q And you've also -- in the court for this case and in other
15 settings -- you've also studied those institutions and what
16 makes them tick; right?

17 A Yes. You know, not directly study those institutions.
18 But insofar as studying young adults, Christian and otherwise,
19 yes.

20 Q Okay. So based on your experience as a student and a
21 professor at a CCCU-type religious school, how do you think --
22 how do you think the broader community that feeds students to
23 that school, for example, would react if the school tried to
24 change their policies about homosexual and gender transitioning
25 behavior?

1 MR. SOUTHWICK: Same objections. Lack of foundation,
2 speculation regarding how unnamed people in the community might
3 feel about policy changes.

4 THE COURT: Sustained.

5 MR. SCHAERR: It's a part of -- okay.

6 BY MR. SCHAERR:

7 Q Well, based on your experience, Dr. Regnerus, what do you
8 believe would happen to the religious character of those
9 colleges if they abandoned their Bible-based policies?

10 A Their religious character would be up for grabs. Because
11 the contestation of this kind of thing would create a
12 secularizing force within those universities. They would have
13 decisions to make about, "Do we tweak the policy a little bit?
14 How much is -- can we feel like we can tweak it? Is it --
15 what's too much to give away in terms of their particular
16 theological traditions and understandings of the human body,
17 relationships, human sexuality, et cetera?"

18 So you'll see a lot of handwringing, you'll see a lot of
19 meetings over this and, frankly, a lot of these schools it will
20 come down to an understanding of whether they can afford to
21 retain their policy and still survive. And if that's the
22 decision they have to make, they will either alter it in order
23 to stay open, or they will not alter it and see what happens.
24 But usually this is a case where only the strong, in terms of
25 the financially most stable among these universities, will make

1 it if they don't change.

2 But, frankly, to think about like how do they change it,
3 they'll be faced with a host of questions not only about the
4 present -- you know, what must we do to tweak our policies not
5 to discriminate -- but also like the anticipatory of the
6 future. Because, you know, oftentimes the plus in LGBTQ+ is
7 about, you know, forms of sexual orientation or gender identity
8 or combinations thereof that are coming -- emergent in some
9 ways. So it's kind of asking them to move their boundary marks
10 but in an unclear environment.

11 So I think it would create, frankly, like serious crises
12 at a lot of different schools -- most of the CCCU schools --
13 and create sort of chaos within prior to the -- when they have
14 to make up decisions on this stuff and live with it.

15 Q Okay. And you mentioned that some of them would be
16 financially strong enough that they would feel like they could
17 retain their traditional historical understanding of sexuality;
18 right?

19 A Right. Typically, depending on if they're
20 tuition-dependent. If they're tuition-dependent, then they're
21 in serious trouble.

22 Q Okay. And so for those who are less tuition-dependent,
23 what would the impact of somebody's forcing -- trying to force
24 them to abandon their traditional policies be on the class of
25 students that they can accept and serve?

1 A Right. They would probably not change much about the
2 students they're enrolling there. It's the universities that
3 are sort of -- will be financially stressed by this that -- you
4 know -- not having access to Stafford Loans and Pell Grants
5 would be -- make for a much more challenging decision-making
6 environment for them.

7 Q Okay. And does that also mean that they would have to
8 turn away some students who would otherwise like to go there
9 but could no longer afford to because they don't have federal
10 support?

11 A Not knowing how admissions works in any of these
12 schools -- admissions is often, so far as I can tell, based on
13 educated guess works and algorithms. And so I think a lot of
14 those would have to shift quite significantly.

15 Q Okay. And they might shift away from students who were
16 financially needy; is that fair?

17 A That would be more speculative on my behalf. But if
18 they're looking for people who can afford it, who don't need
19 help, that's who they would be primarily interested in, I
20 suspect.

21 Q Okay. And is it fair to say also that what you called
22 CCCU-type institutions are trying to build what they would
23 consider Christian communities?

24 A Yeah. It's my experience, personally, and also my
25 observation --

1 Q Mm-hm.

2 A -- that the kind of community that they purport to create
3 for students is one of their primary sort of advertising
4 points.

5 Q Okay. And is part of that effort to create a Christian
6 community offering a community where -- where people -- where
7 the entire community is committed to living traditional
8 Christian teachings?

9 A Yes. You know, most students going to these schools are
10 aware of their relationships, policies, or become aware of them
11 shortly after they get to campus. And so it's kind of the
12 deal. Sometimes it's -- you go in assuming there's a policy
13 even if you don't know it yet. But -- and lots of people are
14 attracted to that.

15 I would presume that most people who elect to attend a
16 school like this are attracted to that notion at least, you
17 know, at the beginning. I mean, lots of people can rethink
18 their love for the relationship policies after they're
19 enrolled. And that applies to all manner of kinds of students.
20 But most of the time people going in saying, "This is what I
21 want."

22 Q Mm-hm.

23 A Today more than ever people apply to more schools and
24 get -- seem to give a lot more thought to it than ever before,
25 which taxes the algorithms of lots of these schools. "Hey, if

1 you're applying to eight or ten schools, and you only go to
2 one, what chance do they have of coming here?"

3 Q Sure. So as you understand it, Dr. Regnerus, what's your
4 understanding of the evidence on the number of LGBT students
5 who decide to go to CCCU-type colleges even with their
6 sexuality and gender policies?

7 A Yeah. That's challenging. And I reviewed the estimates.
8 I'm thinking that was Dr. Coley who made that if I'm not
9 mistaken. I know the term 100,000 -- or the word -- the
10 number 100,000 was tossed out, but it possibly is as large as
11 133,000.

12 Now, I think it was Dr. Coley who kind of evaluated this
13 based on sort of how many LGBT, you know, 17 to 18-year-olds
14 should we presume there to be in the country, and then let's
15 sort of apply that to the schools. But I think there's a lot
16 of self-selectivity that goes on here that he didn't really
17 account for. I think that there's a fair number who decide
18 that this is, you know, not what they want and don't enroll in
19 the first place --

20 Q Mm-hm.

21 A -- more likely don't even apply in the first place. Or if
22 they apply and enroll, some of them have negative experiences
23 or decide that, you know, college is a time for
24 experimentation, et cetera, and they decide, "Well, maybe this
25 is not for me, and I'll transfer somewhere else." The United

1 States educational institutions are some of the most forgiving
2 in the world. I mean, people enroll here, enroll there, two to
3 three different places. So it's a pretty strong free market in
4 higher ed.

5 Q Okay. Now -- but in all events you agree with the
6 Plaintiffs' experts that, at a minimum, it's a significant
7 number of LGBT --

8 A Yeah.

9 Q -- students who choose to go to CCCU-type colleges; right?

10 A Yes. Yes, for sure.

11 Q And per your review and your own experience, do you have
12 an understanding of why members of the LGBT population might
13 choose to attend the CCCU-type school?

14 A Yeah. I presume that, going in, they have quite similar
15 evaluations as non-LGBT students going in. They recognize, on
16 average, I suspect, that -- they're aware of the relationship
17 policies, and they want to abide by them. Sometimes they're
18 not aware, or sometimes they're not aware of the scope of it.
19 But, you know, most of the students enrolling in these things
20 understand it's a Christian institution, Christian-based
21 policies, and desire the kind of environment that that college
22 offers.

23 And, you know, I think both LGBT and non-LGBT students
24 recognize that Christian sexual morality is not simple, not
25 easy. There's a costly kind of obedience to it. But there's

1 also forgiveness and the supposition of a community of support
2 for living out difficult things. So I presume that they're
3 interested in that as much as non-LGBT students.

4 Q Okay. And did you review any literature on the mental
5 health of LGBT persons who decide to live celibate lives in
6 order to be able to live consistently with their Christian
7 beliefs?

8 A Well, insofar as we're talking about the Yarhouse study,
9 yes. I mean, here's not a lot written on the subject so far as
10 I can tell.

11 Q Hm.

12 A And in the Yarhouse book, he talks about -- I think it's
13 300 persons in his study. And they live in different kinds of
14 situations. Some are in what they call "mixed-orientation
15 marriages." Some like to live celibate lives.

16 Anyways, he pools these and reports that 80 percent of
17 them appear in the normal range for depression; 90 percent in
18 the normal range for anxiety; and a little bit lower --
19 63 percent -- for life satisfaction. So compared to like
20 normal ranges -- you know -- like the average for the
21 population for their age.

22 So it's -- you know -- he also characterizes this life as
23 challenging and not simple, yet, it can be rewarding in terms
24 of family life, and shared children, friendship and love
25 between spouses. But he noticed too that -- you know -- he had

1 bisexual and homosexuals in the study. Homosexuality is more
2 apt to contribute to divorce than bisexuality was. So it's a
3 mixed, complex situation.

4 Q Okay. And the Yarhouse study that you mentioned is the
5 study that's discussed in paragraph 38 of your report; is that
6 right?

7 A I believe so, yes.

8 Q And how did Dr. Yarhouse's figures compare with the
9 general background rate of depression and anxiety and distress,
10 again, in the broader population?

11 A Right. On average, compared to the broader population of
12 adults and different kinds of situations and settings, the
13 relationship status is comparable.

14 Q Mm-hm.

15 A LGBT adults tend to have higher rates of emotional health
16 difficulties, self-reported or clinical.

17 Q Mm-hm.

18 A So they appear better than their average peers. At the
19 same time, it's a -- you know -- it's a self-selected sample
20 that Yarhouse employs in this. So I wouldn't want to set the
21 precedent of comparing self-selected samples too closely with
22 population averages, because there are different kinds of
23 types.

24 Q Okay. And do you have any sense of the background rate of
25 depression and other mental illness in the LGBT population at

1 large?

2 A I think in terms of the rates of adult depression, it's --
3 if I'm not mistaken -- it's between 30 and 40 percent but, I
4 mean, you know, experienced over time. Right? It's not
5 necessarily at any one point in time.

6 Q Mm-hm.

7 A People move in and out of depressive episodes, et cetera,
8 higher than what Yarhouse is seeing.

9 Q Okay.

10 A But, again, it's not quite the ideal comparison.

11 Q Sure. All right. Does the literature address a category
12 of LGBT adults who decide to enter what are called
13 "mixed-orientation relationships"?

14 A It does. And there's not a lot of literature on that.

15 Q Mm-hm.

16 A But there's some. And I located kind of a -- an
17 evaluation of the literature on this subject published I think
18 in 2011 to 2015.

19 Q Okay. And is that something that a member of the LGBT
20 community, who is also a devout Christian, might consider as a
21 way of trying to follow their Christian beliefs?

22 A They could and some do.

23 Q Mm-hm.

24 A I don't have a good sense of how many.

25 Q Mm-hm.

1 A I'm sure it's a minority though.

2 Q Okay. And what impacts, if any, would being at a
3 CCCU-type institution have on their ability to make that
4 choice?

5 A I'm not sure I followed that question. Could you repeat
6 again?

7 Q Okay. Would such a person's decision to attend a
8 CCCU-type institution -- would that assist or deter them or
9 harm them in trying to live that model?

10 A Oh, yeah. I presume it would assist them, provided they
11 found a community of social support and sort of the ability to
12 speak freely, get counseling, and find encouragement on what is
13 obviously a difficult, challenging pathway.

14 Q Sure. And would the same be true for members of the LGBT
15 community who decide they want to be celibate, at least for a
16 time?

17 A Could they -- they would find comparable kinds of support.
18 You know, it varies. And I recognize that this case is built
19 in part by people's self-reports of decidedly different kinds
20 of experience.

21 Q Sure.

22 A But I believe a CCCU purports and attempts to demonstrate
23 kind of a gracious community and assist people in living
24 Christian life in various ways and shapes and forms, not just
25 around the matter of sexuality. But, as I mentioned before,

1 Christian life is -- I think it was (indiscernible) -- it's
2 nothing if not difficult. So I think part of their
3 understanding is this is a community that is aimed to help
4 people do difficult things --

5 Q Okay.

6 A -- whether they're LGBT or not.

7 Q Okay. And so you said earlier that CCCU-type institutions
8 would typically provide a community of people who were trying
9 to live the Christian faith regardless of the difficult
10 circumstances that they find themselves in; right?

11 A Right. That seemed to be the case. Yes.

12 Q Okay. And so is it fair to say that an LGBT student who's
13 decided that he or she wants to live a celibate lifestyle, at
14 least while they're in college, would likely find support for
15 that in a CCCU-type institution?

16 A Yes. I think they recognize that they have to be -- it
17 could be a challenge to locate that. But so far as I'm
18 familiar with the CCCU world -- and I'm somewhat familiar with
19 it -- you know, they find that some people can be trusted more
20 than others, et cetera. Most of these universities, especially
21 in their administrations and in their student life
22 organizations, care deeply about people and want to help them
23 do, you know, difficult things. And that holds whether they're
24 LGBT or not.

25 I mean, when you are 18 to 23 and in college, whether

1 you're gay or straight, hewing to sexual relationship behavior
2 norms and rules is not simple. It reminds me a little bit of
3 the old Dallas Cowboys Head Coach Tom Landry. He says, "My job
4 as a football coach is trying to get men to do what they don't
5 want to do so that that can become what they always want to
6 be" -- you know -- football players.

7 Q Mm-hm.

8 A So it's like I think that's how the CCCU understands this.
9 It's like our job is to help students become, you know, not
10 just better educated but more mature Christians, even if, at
11 any given day or weekend, lots of them don't really wish to be.
12 So it's a challenge. But it's -- I think it's a challenge
13 that's central to their identity as organizations.

14 Q Okay. So, Dr. Regnerus, what role might bisexuality or
15 sexual orientation fluidity play in the attractiveness of
16 Christian colleges for members of the LGBT community?

17 A So Dr. Meyer said the other day -- and it's kind of
18 passing -- and I'm not sure I'll -- I might be paraphrasing
19 these things -- "There are all kinds of combinations that are
20 possible, though perhaps not common."

21 As the wider academic community around the study of sexual
22 orientation recognizes the increasing role of fluidity, both in
23 sexual orientation and in gender ideology -- especially for
24 women but not exclusively so for women -- as that continues to
25 be the case, it's not a stretch for me to think that

1 students -- again, more women than men -- would get to --
2 frankly, I mean, there's probably two-thirds women at most of
3 these CCCU schools in general --

4 Q Mm-hm.

5 A -- because of skewed sex ratios -- would get to campus.
6 And, you know, from my work on the third book I published at
7 Oxford, I had a slide in there where it shows that the share of
8 younger adult women who called themselves 100 percent
9 heterosexual, plunges age 18 down through like age 30. And
10 then it starts another climb up to -- and then surpasses the
11 share of men who do this.

12 There's definitely a U-shaped curve around heterosexuality
13 self-identified among young adult women. So -- and I can only
14 surmise from that, that during the college experience, there
15 are more women experimenting who have described themselves or
16 their sexual orientation perhaps as somewhat fluent. Right?

17 Now, that experience -- you know -- they may be
18 experimenting. At the same time, there's these rules that are
19 fairly fixed in their university about relationship and elicited
20 behavior. It's plausible to me that the stability of the
21 rules -- while that may be irritating to them -- but it's
22 something that helps them, too, to become what they want to be
23 down the road.

24 Again, it's like -- it's an interesting time in these
25 people's lives. There's still identity formation going on.

1 There is -- as I just said about the -- sort of the skewed sex
2 ratios -- those make for difficult relationship environments on
3 campus when half of -- a third of the population on campus is
4 male and up to two-thirds is female.

5 So, you know, I can see how these rules are kind of a
6 guide star for people who are in an awkward time of life and in
7 awkward sex ratio scenarios basically.

8 Q And you can see how those rules, as you put it earlier,
9 would help them to become what they in fact want to be or at
10 least --

11 A I mean, those things remain stable --

12 Q Mm-hm.

13 A -- while they are in sort of this period of searching and
14 at least self-perceived change.

15 Q Okay. And --

16 THE COURT: Counsel, I just want to let everyone
17 know. It is now 11:30. And I'm very serious. I have another
18 docket that starts at 1:00. That's all the time I have today
19 and the rest of the week. So I'm going to suggest that -- to
20 the extent that this testimony is going to be helpful -- that
21 we narrow in on what issues actually I need to address and what
22 would be helpful.

23 MR. SCHAERR: Sure, Your Honor. And I have just a
24 couple more questions on this topic. And then I'm -- then I
25 think I'm just about done. Would the Court prefer to take a

1 break now, or should we keep going?

2 THE COURT: No. I don't think there's time for a
3 break --

4 MR. SCHAERR: Okay.

5 THE COURT: -- because I suspect there will be a
6 somewhat lengthy cross. And I'm suggesting that -- I am -- I
7 am very capable of evaluating the testimony and giving what
8 weight it's due, and that people focus on the issues that I
9 need to address in this PI hearing.

10 MR. SCHAERR: Okay. Well, thank you, Your Honor.

11 BY MR. SCHAERR:

12 Q Dr. Regnerus, let's just quickly finish up on this point.
13 In your expert opinion, what do you -- what do you think about
14 whether religious colleges embracing traditional Christian
15 theology on sexuality might be a good fit for LGBT students who
16 are seeking to reconcile their sexuality and/or gender identity
17 with the traditional Christian faith?

18 A Right. If that's what they wish, and it's a self-selected
19 higher ed environment out there, I think it's a pretty good
20 place to go. Because if you look at the higher ed offerings in
21 the United States, there's thousands of colleges and
22 universities, but there's not that many sort of distinctively
23 Christian colleges and universities like the CCCU-type.

24 So people have every option to go other places. So we
25 should make some presumptions about the people who elect to go

1 here intentionally, willingly, recognizing that, you know,
2 they're persons in formation. And it can be a challenging
3 four-plus years. But I think, you know, it's a -- it's good
4 place for community that cares about people. I recognize that
5 it can not always be a great fit.

6 But, in general, like we -- we see their -- sort of the
7 rates of success even in the REAP report, which, you know, was
8 fielded in the COVID era -- the rates of challenges and
9 difficulties on campus are better than off campus or better
10 than other secular campuses on average.

11 Q Okay. And, Dr. Regnerus, what role do you see CCCU-type
12 colleges playing in the diversity of the higher education
13 marketplace?

14 A Right. I think they play a pivotal role. They have lots
15 of fans out there, parents, multigenerations of people who have
16 attended particular schools like them. They are growing. They
17 grew during the COVID era, decisively, even while lots of
18 colleges receded.

19 Q Mm-hm.

20 A People taking time off, et cetera. So I think there's
21 demand for such schools. But most of those schools are
22 constantly cash-strapped, constantly tuition-dependent. And so
23 I think altering the rules here around this will send a lot of
24 them into a desperate search for whether they can make it or
25 not, and challenges to sort of the idea of whether they can

1 retain their relationship policies as is, or whether they could
2 tweak them sufficiently and yet not give up their sort of
3 Christian character and the ways in which they sort of hinge on
4 a longstanding Christian understanding of human sexuality and
5 the meaning of the body and relationships, including marriage.

6 Q Okay. Just two final questions to wrap up, Dr. Regnerus.
7 In summary, just based on your review of the evidence presented
8 by Plaintiffs' experts and your own review of the literature,
9 do you consider there to be a mental health crisis among LGBT
10 young people in general?

11 A Yes.

12 Q And --

13 A It's not limited to LGBT youth, though. It's a mental
14 health crisis among young people in general.

15 Q Okay. And have you seen any evidence to suggest that
16 religious colleges or religious teachings or policies are the
17 cause of that crisis?

18 A I don't see evidence of the cause of the crisis --
19 obviously a sight of conflict in this debate. But I see no
20 evidence that they're a uniquely demonstrable cause in that
21 crisis.

22 Q Okay. Thank you.

23 MR. SCHAERR: I have no further questions for this
24 witness at this time.

25 THE COURT: Cross for the Plaintiffs.

CROSS-EXAMINATION (Continued)

BY MR. SOUTHWICK:

Q Good morning, Mr. Regnerus. Thank you for being here today. I'm going to ask you some additional follow-up questions. I believe you just testified that there is indeed a mental health crisis for LGBTQ young people, and that that is not unique to religious college environments, but that in fact it is a verifiable thing in society; is that correct?

A Correct.

Q So if there's a mental health crisis for LGBT young people, don't you think that that would tell you that they might need greater help and greater protections given the crisis?

A I think that's -- you know -- greater help for sure. I think that one of the questions that is often not addressed here is like how should that help come, from whom should it come, what should the nature of that assistance be, and how are college administrations sort of responsible for all this?

I mean, higher ed is asked to do tons of things these days. And administrations are growing in size. And so I see that help being offered. But it raises, of course, lots of questions about how best to assist.

Q Mr. Regnerus, you did some comparisons between the REAP report and -- which is Exhibit 1 -- and the Rutgers report,

1 which is Exhibit 2 for the Counsel Defendants. Do you recall
2 that testimony?

3 A I do, yes.

4 Q And I'm not going to go through all of that. But I do
5 want to point out and ask you a few questions. I'd like to
6 compare page 20 of the REAP report -- so, again, Council
7 Exhibit 1, page 20 -- which has a chart about level of
8 perceived support from college.

9 A Do you want me to pull that up myself or --

10 Q Yeah, if you could.

11 A Okay.

12 MR. SCHAERR: Maybe we could ask Mr. Prince to pull
13 that up so we could all see it.

14 THE WITNESS: What page and table number did you say?

15 THE COURT: 20.

16 BY MR. SOUTHWICK:

17 Q It's Page No. 20 of Exhibit 1 of the REAP report.

18 A Got it.

19 Q Yeah. And this is the level of perceived support from
20 college. It's a bit -- it looks a bit blurry there. But there
21 is a question in there that says -- that asks -- perceived
22 support from college -- there we go -- and there's questions
23 about whether people feel physically safe, whether they're
24 being prepared for graduation. I'd like to go down to the
25 section that says, "I feel as though I belong on campus." So

1 right here.

2 A Right.

3 Q Right here. And the data, according to the REAP report,
4 appears to be that only 16 percent of gender minority students
5 and 23 percent of LGBTQ+ students agree that they feel as
6 though they belong on campus. Is that a fair summary of this
7 data from the REAP report?

8 A Yes, insofar as -- you know -- I mean, this is fielded
9 while most of them were not on campus. So it's a little bit
10 funky to ask a question about how they feel belonging on campus
11 when they could well have been in, you know, month five or six
12 of an off-campus experience. But, yeah, in general, I presume
13 they're reflecting on that. And then it's statistically
14 probably significantly lower than straight respondents.

15 At the same time, you know, only 46 percent of straight
16 students reported they feel they belong on campus. In general,
17 you know, you've got a lot of people who don't feel like they
18 belong, which is -- you know -- it's interesting. I would
19 surmise, short of confidence, that those numbers are even
20 higher in terms of feeling like they don't belong at secular
21 universities. But I don't have that kind of comparison here.

22 Q Well, Mr. Regnerus, we actually do have that comparison,
23 and that's --

24 A We do? All right.

25 Q And that's Exhibit 2 -- the Rutgers report -- pages 14 and

1 15. And page 14 asks campus climate for heterosexual and
2 queer-spectrum students -- question being "I feel like I belong
3 at this university." 55 percent of heterosexual agreed.

4 48 percent of queer-spectrum agreed. Do you see that?

5 A Yes. Statistically, probably significantly different, but
6 higher at least in terms of queer-spectrum students than --

7 Q Right. So --

8 A Right. (Indiscernible).

9 Q -- it's a pretty stark contrast.

10 A That was also --

11 THE COURT: Wait. Please stop. Stop. Please one of
12 you ask a question, take a breath, answer the question. Please
13 quit speaking over one another.

14 THE WITNESS: My apologizes, Your Honor.

15 MR. SOUTHWICK: Mine as well.

16 BY MR. SOUTHWICK:

17 Q Mr. Regnerus, are you able to see this chart here?

18 A Yeah, if you could blow it up just a bit.

19 Q Just a bit? So we're looking at Exhibit 2, page 14. And
20 there's a section right here. "I feel like I belong at this
21 university." And does it appear that approximately 55 percent
22 of heterosexual students and 40 -- almost 48 percent of
23 queer-spectrum students agree?

24 A Right. So that means it's almost, on average, about --
25 probably a little bit above 50-some percent compared to the

1 last line, which would be lower than 50 percent. But it's
2 also -- you know -- they're fielded at very different times.
3 So there is a -- a decided COVID effect that we just don't know
4 that -- the magnitude of that effect. And then also the
5 different kinds of questions -- they're asking about "my
6 university," and the other one, if I'm not mistaken, is about
7 "on campus." Right? They're just -- you know -- they're just
8 different.

9 Q Fair enough. Fair enough. But the heterosexual and
10 queer-spectrum responses in Exhibit 2 are pretty close.
11 There's only a -- a what? -- an 8 percent difference; right?
12 And then if we look at the REAP report, it's 23 versus 46. So
13 there's actually a 23-point difference; is that right?

14 A Right. In the Rutger study, it looks like they coalesced
15 or pooled together those who "agreed" and "strongly disagreed."
16 I don't offhand know how the REAP report described that.
17 There's a simple "yes/no."

18 Q And then the second page -- or, sorry -- the next page of
19 the Rutgers report, which is page 15, asked campus climate
20 comparison of trans-spectrum and cisgender peers. And in that
21 same question, "I feel like I belong at the university,"
22 54 percent of cisgender agreed, and 38 percent of
23 trans-spectrum agreed. Does that look correct?

24 A Yeah. Except it should be compared to the questions
25 immediately above it about being valued as an individual. I

1 mean, there should be a correlation between being valued as an
2 individual and feeling like you belong on the campus or at the
3 university. But one of those yields higher, on average, rates
4 than the other one. Right?

5 So belongingness and valuedness (sic) -- and then I would
6 compare it to sort of how the REAP question -- you know -- it's
7 tricky to make direct comparisons given quite different
8 samples, different times, and different question wordings. At
9 the same time, I agree, I see a difference here.

10 Q Looking back at Council Exhibit No. 1, the REAP report,
11 page 22, a series of questions were asked about on-campus
12 participation among sexual minority, gender minority, and
13 straight students. And there's a chart about them feeling
14 accepted by others, dating the person you want.

15 And I'm actually look at page 22 of the REAP report.
16 Yeah, that chart right there. And the first category is
17 feeling accepted by others. And it's whether or not -- whether
18 they are likely to report not being able to fully participate
19 in college life in their heterosexual and cisgender peers.

20 So for sexual minority students, 43 percent report not
21 being able to fully participate, 48 percent of gender minority,
22 and 4 percent of straight. Do you see that, Dr. Regnerus?

23 A Feeling accepted, not fully participate.

24 Q Right. Whether or not --

25 A I mean (indiscernible) --

1 Q Yeah. So here sexual and gender minority students appear
2 to have much higher percentages of not feeling accepted by
3 others as compared to straight students; is that correct?

4 A At face value.

5 Q And, Mr. Regnerus, have you reviewed any data that would
6 contradict this finding of the REAP report?

7 A Not directly, though you just looked on the columns. You
8 know, when you get specific about, you know, joining clubs,
9 prayer groups, dating who you want, having a roommate of your
10 choice -- there's distinctions, but they are a lot smaller
11 distinctions. So it seems to be tapping kind of -- that first
12 question -- a subjective sense of what other people think of
13 them, not necessarily of whether they are actually -- you
14 know -- have a failure of access to roommates, prayer club,
15 clubs, classes.

16 So they seem -- one seems to be a decidedly more
17 psychological measure. The other one seems to be like a series
18 of access measures.

19 Q Mr. Regnerus, would you agree that dating can be a very
20 important part of the college experience for a lot of students,
21 both at CCCU campuses and elsewhere?

22 A It seems to be less important today than when I was in
23 school. But, yeah, I mean, historically the 20s -- early
24 20s -- were when you started dating.

25 Q And according to this data, 25 percent of sexual minority

1 students and 30 percent of gender minority students report that
2 they are not able to date the person that they want. And
3 that's in contrast to 2 percent of straight students.

4 A I see that.

5 Q Is that correct? Do you have any data that contradicts
6 this assessment here?

7 A I don't. Again, at face value, that means three-quarters
8 of the sexual minority don't feel difficulty in that.

9 Q I apologize.

10 MR. PRINCE: Mr. --

11 MR. SOUTHWICK: I'm done with this exhibit. Thank
12 you, Josh, for your help. I appreciate that.

13 BY MR. SOUTHWICK:

14 Q Mr. Regnerus, do you recall being part of a group of
15 sociologists who provided an amicus brief in the Masterpiece
16 Cakeshop v. Colorado Civil Rights Commission case at the
17 Supreme Court in 2017?

18 A I do.

19 Q And can you --

20 MR. SOUTHWICK: Oh, Gene might be trying to say
21 something.

22 MR. SCHAERR: I was trying to saying something. I'd
23 like to object to this on relevance grounds.

24 MR. SOUTHWICK: Your Honor, I'm going to ask
25 Mr. Regnerus about some of his statements regarding structural

1 stigma in this brief. And I believe that -- to cross-examine
2 him regarding his testimony about structural stigma earlier.

3 THE COURT: Overruled. Go ahead.

4 BY MR. SOUTHWICK:

5 Q Mr. Regnerus, in this brief, you state, "That Antigay
6 discrimination can diminish psychological and physical health
7 is widely acknowledged." Do you recall that?

8 A I do. Do you have a copy of the brief that I could look
9 at?

10 Q Sure.

11 A It's been a while since I've looked at it.

12 Q I can pull it up here on my screen. Give me one second.

13 MS. SNYDER: And, Paul, could I also ask that you
14 have somebody email that to me?

15 MR. SOUTHWICK: Sure. Okay. Let me make sure that
16 this popped up. Okay. All right. We'll have that sent
17 around.

18 BY MR. SOUTHWICK:

19 Q And I'm not trying to introduce this into evidence or
20 anything, but I did want to ask you about some of your
21 statements. So this is the -- this is the brief I'm referring
22 to here. And it looks like it was filed on behalf of you and a
23 few others. Do you recall this brief, generally, Mr. Regnerus?

24 A Generally, yes.

25 Q All right. And the question before the Court was about a

1 Colorado public accommodation law. This is the wedding cake
2 case; right?

3 A Yep.

4 Q As it's called in general parlance. All right. And can
5 you inform the Court of the purpose of the brief that you filed
6 in this matter?

7 A Yeah. By looking at what you have on the screen? Or if
8 I -- I could pull it up myself and quickly review it.

9 Q Do you recall that it had to do with structural stigma or
10 antigay stigma and the effects that that may or may not have on
11 LGBT people?

12 A Yeah. That was part of the brief. Yes.

13 Q Okay. And what I'm looking at here is on page -- the top
14 of page 5. This statement -- this statement here where you
15 state, "That antigay discrimination can diminish psychological
16 and physical health is widely acknowledged." So, Mr. Regnerus,
17 do you stand by that statement today?

18 A Yes.

19 Q All right. Mr. Regnerus, in your -- I'd like to turn back
20 to your expert report. So let me pull your report up. Okay.

21 A Paul, this is a follow-up to that, if I may?

22 Q Sure.

23 A The word "can" is kind of essential to that statement.
24 Because I go on to describe why I did not think the particular
25 case in Colorado rose to that kind of level. In social

1 science, lots of us use the words "can" or "may." In my
2 report, I kind of called out -- I believe it was Dr. Wolff and
3 perhaps Dr. Meyer -- for often using "cans" and "mays," which
4 are a weaker than, sort of, does. Right? "Does" is sort of
5 this more confident statement like in -- consistently in cases.
6 It does create this problem. "Can" is sort of like it might.
7 Right? That's all.

8 Q Thank you for that clarification. So, Mr. Regnerus,
9 turning back to your report, it's paragraph 32, if you could
10 let me know when you've had a chance to pull that up --

11 A I got it.

12 Q -- or if you can see that all right here.

13 A Mm-hm.

14 Q All right. In paragraph 32, you refer frequently to
15 experiences of brokenness -- broken families, marriages,
16 bodies. You use that term repeatedly in paragraph 32 about
17 broken. And can you explain what you mean by "brokenness" in
18 paragraph 32 and in the context of your expert opinions
19 regarding sexual orientation, gender identity, and Christian
20 sexual ethics at the Council's colleges?

21 A Right. So it's a quote. It's not my own words. But --
22 and I cite it to sort of say that, as I stated, the Christian
23 Church should be free to respond to cultural shifts. I think
24 it's fair to say, given secularization patterns in the United
25 States, the Christian Church feels more embattled. But it also

1 is dealing inside its own ranks with the greater levels of
2 brokenness in terms of relationships, divorce rates, personal
3 problems.

4 This is why there's always cultural-wide experience of
5 brokenness, et cetera, including broken bodies -- people who
6 self-harm, et cetera -- drinking, drug use. And so, you know,
7 it's a -- this term "accompaniment" there you see -- I think
8 this is actually a -- a Catholic theologian is writing this
9 stuff. Accompaniment is sort of what Christian colleges and
10 universities aim to do, is to accompany people in various
11 degrees of brokenness in their Christian life and why.

12 Now, that is not to claim that LGBT persons are uniquely
13 broken. I did not make that claim. Rather, that taps into
14 historical theological understandings of persons, in general,
15 as being broken and separated from God. So it's just an
16 insertion that highlights that Christian communities often
17 understand their purpose as being one to sort of -- this is
18 kind of a trite term -- but like showing -- one beggar showing
19 the other beggar where the bread is. Right?

20 So that -- it's a -- to help people to live with the
21 brokenness in their own lives sometimes, of which they can't go
22 back and repair things that have been done to them, things they
23 their parents did, et cetera. So just a reflection of sort of
24 the theological understanding of sin as brokenness.

25 Q And then you follow that up with the next paragraph

1 saying -- the second sentence -- "Authentic religious freedom
2 requires allowing Christians to articulate this vision of human
3 sexuality, theology-based anthropology freely and unhindered";
4 is that right?

5 A Yes.

6 Q Is it your understanding that the Council for Christian
7 Colleges and Universities -- that they base their sexual
8 conduct policies on a belief or world view that people who
9 engage in homosexual acts or homosexual relationships are
10 broken, as you described above?

11 A I don't think they base sort of the relationship policies
12 on anything distinctively about sexual orientation but as part
13 of a general perspective of the brokenness that stalks a world
14 that's sort of basically steeped in sin basically.

15 And, you know, talking about structural stigma, you can
16 talk about structural sin and personal sin. Christians are
17 nothing if not about trying to help people deal with sin in
18 their own lives and quest for Godliness or holiness. I'm not
19 sure if I'm answering your question though.

20 Q So, Dr. Regnerus, would you agree that the Counsel for
21 Christian Colleges and Institutions maintain their policies
22 prohibiting same-sex relationships and behavior, at least in
23 part, to convey the message that same-sex relationships and
24 sexual behavior are illegitimate relationship forms?

25 A Illegitimate would typically mean reference to a

1 community. I think they would maintain that those are outside
2 the designs of their creator.

3 Q And would you also agree that similar to a criminal law --
4 like let's say a state criminal law that punishes homosexual
5 sodomy -- that on a smaller scale within this institutional
6 environment, these codes of conduct function in a similar
7 manner by punishing homosexual sodomy or homosexual romantic or
8 sexual relationships?

9 A From the looks of the REAP report, I don't think a whole
10 lot's getting punished, period, in terms of student
11 administration and sexual relationship policy. It seems rare,
12 and I suspect that's not how they go about perceiving it.

13 Q Well, would you agree that state laws -- let me back up a
14 little bit. Are you familiar that prior to the Supreme Court's
15 decision in Lawrence v. Texas, certain states continue to
16 criminalize homosexual behavior; do you recall that?

17 A I recall it. I -- it's my understanding that they were
18 seldom forced.

19 Q And I do want to ask about that in terms of structural
20 stigma and enforcement. It's also true that -- I think as you
21 just said -- that these criminal prohibitions on homosexual
22 sodomy were infrequently enforced by state governments; is that
23 right?

24 A It's my speculation, but I have no data about this.

25 Q But would you agree that -- even though infrequently

1 enforced -- that laws that criminalize or punish a particular
2 class of persons -- such as homosexuals with laws about
3 homosexual sodomy -- that those can exert a negative impact on
4 LGBTQ people, even if they're not being hauled into court every
5 time they have sex with their partner. Would you agree with
6 that?

7 MR. SCHAERR: Your Honor, I'm going to object to this
8 question. Calls for speculation and a legal conclusion.

9 THE COURT: Would you rephrase your question, please?

10 BY MR. SOUTHWICK:

11 Q Would you agree that laws or policies that criminalize or
12 forbid same-sex conduct or same-sex sexual relationships can
13 have an adverse impact on the LGBT community regardless of how
14 frequently those policies are enforced?

15 MR. SCHAERR: Your Honor, the same two objections to
16 this question.

17 THE COURT: Break your question down, would you
18 please, and rephrase it.

19 BY MR. SOUTHWICK:

20 Q Mr. Regnerus, referring to the REAP report, you were
21 testifying about how it's a pretty small percentage of LGBTQ
22 students who have actually experienced a form of discipline for
23 violating university's codes of conduct; do you recall that?

24 A I do. I do want to pull that slide up a second myself.
25 I've got it here. The university sanctions thing? Got it.

1 Q Yeah. Would it surprise you -- going to this issue of
2 structural stigma, would you agree that at least some of the
3 LGBT student population at these schools could feel some kind
4 of stigmatic harm or feeling of exclusion from these policies
5 that prohibit same-sex sexual conduct, even if they don't
6 actually get disciplined pursuant to the policy?

7 A Yeah. I think that's fair to say.

8 Q Mr. Regnerus, in your report you talk, in certain parts,
9 about sexual orientation change efforts and gender identity
10 change efforts. Do you recall that?

11 A I do. If you pull it up, I can make direct reference to
12 it.

13 Q All right. I believe that we're starting on paragraph 41
14 of your report. And you go on through a few paragraphs talking
15 about sexual orientation change efforts and that there are a
16 variety of kinds; do you recall that?

17 A Yes.

18 Q So my question to you is -- Dr. Regnerus, it sounds like
19 in here you're talking about -- that there are kind of older
20 forms of sexual orientation change efforts like electroshock
21 therapy, and that you said that that kind of a treatment has
22 been in disfavor for decades; is that right?

23 A To my knowledge, yes.

24 Q To your knowledge, are there other forms of sexual
25 orientation change efforts that are in favor currently?

1 A In favor? Again, these are typically not so much about,
2 like, change. It's about sort of -- what I highlight there is
3 the importance of people being able to seek psychological help
4 for what they wish to seek help for. And so I'm not comparing
5 that to change efforts. But I think about sort of the wide
6 popularity of cognitive behavior therapy, where you're dealing
7 with unwanted feelings, and psychologists can often sort of
8 help people deal with unwanted feelings.

9 I make no claims about change in there. I just complain
10 there that typically all of these things are lumped into one
11 sort of kind of label of being about change when I see little
12 evidence from the CCCU that they're involved in change efforts.
13 But Dr. Meyer talks about this and kind of creates this
14 impression that the CCCU schools are -- or give the impression
15 that this is a clear risk of going there.

16 Q Dr. Regnerus, is it your opinion that the colleges
17 attended by Plaintiffs should be allowed to practice sexual
18 orientation change efforts in their on-campus counseling
19 centers as you have described them in your report?

20 MR. SCHAERR: Your Honor, objection. This calls for
21 speculation, and it's outside the scope of this testimony.

22 THE COURT: I believe it is. Sustained.

23 BY MR. SOUTHWICK:

24 Q Dr. Regnerus, I believe that you testified that it's
25 important for religious colleges like the ones Plaintiffs

1 attend -- it's important for them to be able to preserve their
2 sexual behavioral codes of conduct, because it's an essential
3 part of the kind of college or kind of institution that they
4 are; is that fair to say?

5 A I think that's fair. With regard to sort of the
6 specifics, though, it ranged widely within the CCCU. But I can
7 only presume that they're -- you know -- given the close
8 associations of Christian understandings of the human body and
9 the purpose of relationships, sexuality, and marriage -- all
10 that stuff -- that you're going to get different kinds of
11 policies, but that those policies will be fairly important to
12 those schools.

13 Q Sorry. I'm having trouble with my computer trying to pull
14 up this -- okay. There we go. Well, my computer's not working
15 here. All right. Sorry about that. I'm struggling with my
16 PDF, but I've got it back. All right. I'm nearing the end of
17 my questioning, Dr. Regnerus. But just a couple more things I
18 want to go over with you. And this paragraph 33. Again, we
19 read from this after the brokenness discussion. And we read
20 the section about, "Authentic religious freedom requires
21 allowing Christians to articulate this vision of human
22 sexuality and theology-based anthropology freely and
23 unhindered." And that remains your testimony today; is that
24 right?

25 A Yes.

1 Q Dr. Regnerus, are you familiar that many of the same
2 Council for Christian College Institutions that are the subject
3 of Plaintiffs' complaint -- that many of those same
4 institutions prohibited interracial marriage and interracial
5 dating among their student body on the basis of sincerely held
6 religious beliefs?

7 MR. SCHAERR: Your Honor, I have to object to this.
8 It's well beyond the scope of his direct testimony and calls
9 for speculation.

10 THE COURT: Sustained.

11 BY MR. SOUTHWICK:

12 Q Mr. Regnerus, you're testifying here about what true
13 religious freedom requires in terms of sexuality and theology.
14 And so what I'm asking for you is about consistency. Is it
15 your testimony that in order to protect true religious freedom,
16 it would allow the Council for Christian Colleges and
17 Universities to maintain bans on interracial marriage and
18 interracial dating if those bans were on the basis of sincerely
19 held religious belief?

20 MR. SCHAERR: Your Honor, same objections, plus it
21 calls for a legal conclusion.

22 THE COURT: I'm going to sustain the objection and
23 ask you to move on.

24 BY MR. SOUTHWICK:

25 Q Mr. Regnerus, are you affiliated with or -- with the Ruth

1 Institute?

2 A I -- you just broke up. "Affiliated" and then I heard
3 "Ruth Institute."

4 Q Mr. Regnerus, are you affiliated with the Ruth Institute?

5 MR. SCHAERR: Your Honor --

6 THE WITNESS: Affiliated --

7 MR. SCHAERR: Excuse me, Your Honor. Let me object
8 to that. It's well beyond the scope of his direct and
9 irrelevant to this proceeding as far as I can tell.

10 THE COURT: I couldn't tell --

11 MR. SOUTHWICK: Your Honor --

12 THE COURT: Was it Root or Ruth? I couldn't
13 understand what was asked.

14 MR. SOUTHWICK: Ruth, R-U-T-H.

15 THE COURT: Okay.

16 MR. SOUTHWICK: This is going to bias, Your Honor.

17 THE COURT: Overruled. It will be asked.

18 BY MR. SOUTHWICK:

19 Q Mr. Regnerus, are you affiliated with the Ruth Institute?

20 A I'm familiar with them. I've given a talk for them. I'm
21 not affiliated with them in the way that I believe some persons
22 are.

23 Q And are you aware that the Ruth Institute has been
24 designated as an anti-LGBT hate group by the Southern Poverty
25 Law Center for promoting falsehoods about LGBT people?

1 MR. SCHAERR: Your Honor, I object to this. He's
2 already said he's not affiliated with this group, so it can't
3 be -- it can't go to bias. And it's certainly well beyond the
4 scope of his testimony or his report.

5 THE COURT: Sustained. Let's move on.

6 MR. SOUTHWICK: All right. No further questions.

7 THE COURT: Cross for the Department of Justice?

8 MS. SNYDER: No questions, Your Honor.

9 THE COURT: Cross for the other Intervenors?

10 MR. TUCKER: And no questions from the Religious
11 School Intervenors.

12 THE COURT: Thank you.

13 Redirect?

14 MR. SCHAERR: Yes, Your Honor, just a couple of
15 questions.

16
17 REDIRECT EXAMINATION

18 BY MR. SCHAERR:

19 Q First of all, Mr. Southwick asked you whether some
20 students could feel stigmatized by college policies even if
21 they don't get disciplined under them. Do you recall that
22 testimony?

23 A Yes.

24 Q What impact would you expect those same policies to have
25 on Christian LGBT students who want to follow traditional

1 Christian teachings on matters of sexuality?

2 A Right. I would anticipate that -- given there are
3 different kinds of LGBT students who enroll at Christian
4 colleges -- some who approve of the rules, some whom chafe
5 under them, or some whom openly oppose them -- you're going to
6 see -- you should anticipate differential opinions about them
7 based on whether they dislike them or not.

8 Q Okay. And for those who want to follow traditional
9 Christian teachings, including members of the LGBT community,
10 what impact would you anticipate that that kind of a rule would
11 have?

12 A I think they may anticipate that these are protective for
13 them.

14 Q Mm-hm.

15 A At the same time, you know, they may have some concern or
16 ambivalence about them. It is some degree of speculation of
17 what they -- how they think about it. What I'm prepared to
18 defend is the idea that LGBT students who enroll in CCCU-type
19 schools are a fairly diverse bunch, as I just said.

20 Q Okay. So is it fair to say that one person's stigma might
21 be another person's support?

22 A Yes. I think that's true. In this case, some people
23 would perceive those as stigmatizing, and other people would
24 largely ignore them, and other people might think they're
25 protective because that's the kind of person and life they want

1 to develop -- right? -- one that sort of fits the Christian
2 teachings of the school.

3 But, again, you know, students are diverse. The policies
4 are diverse. So you're going to see different responses to
5 that, and then different responses over time. Some people grow
6 more comfortable with them, some people grow less comfortable
7 with them.

8 Q Okay. Mr. Southwick asked you about your brief in the
9 Masterpiece case. Do you recall that?

10 A I do.

11 Q Do you recall what the Supreme Court ultimately held in
12 that case?

13 A I think they ruled in favor of Masterpiece Cake. I forget
14 the decision. I understand it's fairly narrow -- and by legal
15 ways I don't grasp. So --

16 Q Okay.

17 A But they ruled in favor of the cake baker.

18 Q Okay. Well, if I were to tell you that part of the
19 Court's holding was that traditional Christian views on
20 marriage and sexuality are entitled to respect in governmental
21 proceedings, how, if at all, would that conclusion relate to
22 the opinions that you've expressed here?

23 A Right. If I'm not mistaken, and I could be, I think that
24 was Justice Kennedy who wanted to sort of state -- and I think
25 he stated that too in Obergefell -- I think -- that Christian

1 understandings on marriage and sexuality deserve -- I don't
2 know what his language was -- but respect and shouldn't be sort
3 of ruled objectionable out of hand.

4 In both of those cases, in which case, you know,
5 extrapolates to the present case, I would think he or at least
6 the decision writers of those cases would think it's an
7 overreach to sort of strike down the -- so the use of what are
8 historically widely understood Christian understandings of
9 relationship behavior and the body.

10 Q Okay. Thank you. I have no further questions.

11 THE COURT: May this witness -- yes?

12 MR. SOUTHWICK: Short recross, Your Honor?

13 THE COURT: There really is no such thing as recross.

14 MR. SOUTHWICK: Oh.

15 THE COURT: I don't know that you have anything more
16 to gain. But I'd just as soon move on with this witness.

17 MR. SOUTHWICK: Okay. Nothing further.

18 THE COURT: You're welcome. May this witness be
19 excused?

20 MR. SCHAERR: Yes, Your Honor.

21 MS. SNYDER: Yes, from the Government Defendants,
22 Your Honor. This is Hilarie Snyder.

23 MR. TUCKER: This is Ryan Tucker. Yes.

24 THE COURT: You're excused. Thank you for your time.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Further witnesses for the Intervenor?

2 MR. SCHAERR: Not from CCCU, Your Honor.

3 MR. TUCKER: And none from the Religious Schools
4 either, Your Honor. This is Ryan Tucker.

5 THE COURT: All right. Thank you.

6 I guess then returning to the Plaintiff. Anything
7 further?

8 MR. SOUTHWICK: This is Paul Southwick. Nothing
9 further from Plaintiffs.

10 THE COURT: Government, I'm just assuming that's the
11 case for you as well.

12 MS. SNYDER: Nothing further, Your Honor, from the
13 Government. Thank you.

14 THE COURT: All right. I believe the record now is
15 complete. And let's talk about dates for filing your arguments
16 in this matter. In looking at the calendar, I want to -- we
17 did some double-checking. It seemed to me that -- we were
18 looking at filing simultaneous briefing. And I was -- we were
19 looking at opening briefs for the 19th. Does that work for
20 everybody?

21 MR. SOUTHWICK: Plaintiffs -- that's fine.

22 MS. SNYDER: Your Honor, just a question. Do you
23 anticipate, in the briefing, citing to like transcript? If so,
24 does the court reporter have a sense of when that would be
25 available?

1 THE COURT: I have two court reporters who handled
2 this matter. I'm going to go off the record and at least talk
3 to the court reporter who covered Friday and today and see what
4 she might be able to guide me with her schedule.

5
6 (A discussion was held off the record.)
7

8 THE COURT: So my -- the court reporter -- we're back
9 on the record. The court reporter tells me she can have the
10 transcript -- and she's assuming that the transcript for court
11 reporter who covered Thursday -- because I don't know whether
12 you've got a transcript or not -- she can have it done in two
13 weeks. So that would be the 22nd.

14 And my suggestion is if you want transcript before you
15 file your brief, or you can do your brief and then refer to the
16 transcript, that I give you two weeks thereafter to file
17 your -- the opening simultaneous briefing. Does that work?

18 MR. TUCKER: Yes, Your Honor.

19 MR. SOUTHWICK: So, Your Honor, that would mean
20 December 6th for --

21 THE COURTROOM DEPUTY: Yes.

22 MR. SOUTHWICK: -- for opening?

23 THE COURT: Yep, December 6th. And then -- and I'm
24 going to have a page limit on it. And I want the page limit on
25 of 35 pages. The response briefs then I would give you two

1 weeks thereafter. And I'll give you the same 35 pages
2 simultaneous briefing. That would be the 20th.

3 MR. SOUTHWICK: Your Honor?

4 THE COURT: Yes.

5 MR. SOUTHWICK: This is getting into a lot of folks'
6 holiday schedules.

7 THE COURT: It's getting into everybody's holiday
8 schedules. And I'll take -- you know -- if you want to set
9 something different, you tell me. I'm going to -- I'll get you
10 an opinion when we get you an opinion. But I just want to make
11 sure that people have the transcript if they need to use it for
12 their briefing, and that we coordinate simultaneous briefing
13 and page limits. So if you want to propose something else, be
14 my guest.

15 MR. SOUTHWICK: So this is Paul Southwick. If we're
16 waiting for the transcript and following the schedule, then my
17 request would be that the response briefs be due after the --
18 after the holidays -- so sometime in early January.

19 THE COURT: Fine with us.

20 MS. SNYDER: That's okay with the Government as well,
21 Your Honor.

22 MR. SOUTHWICK: Something like January 7th or 10th?

23 THE COURT: January 10th is fine with me.

24 MS. SNYDER: Fine with the Government as well, Your
25 Honor.

1 THE COURT: For the Intervenor? You're on mute.

2 MR. SCHAERR: Sorry. I think we can live with that.

3 THE COURT: Yeah.

4 MR. TUCKER: Yes, Your Honor. This is Ryan Tucker.
5 That's okay.

6 THE COURT: Lawyers have a way of knowing how to make
7 the holidays more difficult. And I'm very happy to skirt that
8 with the issues in this case. I think they're easily -- these
9 schedules are easy to have people meet all their obligations.
10 Is there anything else we need to take up at this time?

11 MR. SOUTHWICK: Just to clarify, Your Honor -- this
12 is Paul Southwick -- there will be no reply briefing; is that
13 correct?

14 THE COURT: That's right. Say it all in those two
15 briefs, 35 pages each. I have the full record. I've taken
16 copious notes. I've read everything in this case. We'll be
17 prepared to -- you know -- we will take this under advisement.
18 It's submitted now. And we will have time to rule once we get
19 all the briefing done. And we will issue an opinion
20 thereafter. So if there's anything new that comes up, please
21 contact Cathy Kramer, my courtroom deputy, and let me know if
22 there's anything else we need to know about or address.
23 Otherwise, the case is submitted. I thank you all for you
24 time, for this argument, and for the hearing, as well as what I
25 will anticipate in the written submissions. And we are in

1 recess.

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3 (The proceedings adjourned at 12:26 PM.)
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C E R T I F I C A T E

Elizabeth Hunter, et al. v. U.S. Department of Education, et
al.

6:21-cv-474-AA

PRETRIAL CONFERENCE

November 8, 2021

I certify, by signing below, that the foregoing is a true and correct transcript, to the best of my ability, of the video conference proceedings heard via video conference, taken by stenographic means. Due to the audio-visual connection, parties appearing via speakerphone or cell phone or wearing masks due to coronavirus, speakers overlapping when speaking, speakers not identifying themselves before they speak, fast speakers, the speaker's failure to enunciate, background noises and/or other technical difficulties that occur during video conference proceedings, this certification is limited by the above-mentioned reasons and any technological difficulties of such proceedings occurring over the video conference at the United States District Court of Oregon in the above-entitled cause.

A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Kendra A. Steppler, RPR

Official Court Reporter

Signature Date: 11/22/2021

BY MR. PRINCE: [5] 546/8 548/9 548/25 549/14 550/6 BY MR. SCHAERR: [14] 553/16 555/7 557/9 560/13 573/7 576/10 580/17 583/19 590/24 591/13 593/16 595/6 609/11 632/18 BY MR. SOUTHWICK: [46] 503/9 509/11 511/10 512/20 513/14 513/18 514/1 514/24 515/10 517/20 518/8 519/11 522/4 522/20 523/23 527/23 528/8 528/11 529/13 530/14 530/23 532/10 534/1 534/6 535/3 535/16 536/15 537/1 537/25 542/6 542/14 565/14 566/24 569/11 612/3 613/16 615/16 619/13 620/4 620/18 626/10 626/19 628/23 630/11 630/24 631/18 BY MS. SNYDER: [3] 492/8 493/1 498/11 MR. MILLER: [4] 544/15 544/23 545/3 545/11 MR. PRINCE: [10] 527/21 545/6 545/18 545/21 545/24 546/3 548/7 550/5 551/11 619/10 MR. REGNERUS: [1] 552/20 MR. 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SNYDER: [52] 491/8 492/2 492/24 498/10 503/4 509/7 511/7 512/15 513/11 514/6 515/4 517/17 518/2 518/5 518/15 519/2 519/5 521/23 522/16 527/18 528/7 529/11 530/7 530/21 532/1 533/23 534/3 535/2 535/8 536/5 537/20 541/24 542/10 542/12 544/5 548/22 550/1 551/15 551/18 552/11 575/25 576/6 580/11 583/16 591/6 620/13 632/8 635/21 636/12 636/22 638/20 638/24 THE COURT REPORTER: [1] 549/12 THE COURT: [139] 491/15 491/22 492/1 503/6 509/9 511/9 512/16 513/13 513/17 513/20 513/22 514/8 515/5 517/25 518/4 518/17 518/22 518/25 519/3 519/9 521/25 523/19 527/20 528/10 529/12 530/9 530/22 532/2 533/24 534/4 535/10 536/6 537/24 541/25 544/6 544/13 544/16 544/22 545/1 545/5 545/8 545/16 545/20 545/23 546/1 548/6 548/24 550/3 551/13 551/16 551/22 552/5 552/10 552/13 552/18 552/22 553/4 553/9 553/12 554/21 555/5 556/11 556/21 556/23 557/1 558/4 558/7 558/12 559/4 559/8 559/10 559/12 559/16 559/18 559/24 560/2 560/5 560/10 565/11 566/22 569/6 573/3 575/3 575/8 575/19 576/5 576/8 580/9 580/15 582/25 583/4 583/8 583/11 583/17 591/5 591/9 591/11 593/15 595/4 608/16 609/2 609/5 611/25 613/15 615/11 620/3 626/9 626/17 628/22 630/10 630/22 631/10 631/12 631/15 631/17 632/5 632/7 632/9 632/12 635/11	635/13 635/15 635/18 635/24 636/1 636/5 636/10 636/14 637/1 637/8 637/23 638/4 638/7 638/19 638/23 639/1 639/3 639/6 639/14 THE COURTROOM DEPUTY: [2] 490/10 637/21 THE WITNESS: [45] 491/21 491/25 512/18 514/10 515/6 530/10 532/5 533/25 534/5 535/11 536/7 542/2 542/13 544/7 546/5 549/13 552/9 553/8 553/10 556/14 556/22 556/25 557/4 558/6 558/11 558/13 559/7 559/9 559/11 559/14 559/17 559/20 560/1 560/4 560/9 560/12 566/23 569/9 583/2 583/6 583/10 613/14 615/14 631/6 635/25 / /s/Kendra [1] 641/24 0 0.006 [1] 581/4 0.05 [1] 581/4 0.12 [1] 581/4 08212212 [1] 497/14 1 1 percent [1] 581/5 1,000 [1] 581/6 10 percent [1] 581/11 10-12 [1] 560/16 100 [6] 510/16 512/12 512/23 515/11 515/18 558/3 100 percent [1] 607/8 100,000 [2] 599/9 599/10 102 [3] 508/18 508/18 508/20 103 [1] 508/16 106.12 [1] 524/16 106.31 [1] 527/25 106.34 [2] 539/17 539/19 106.40 [1] 528/4 108 [5] 497/22 497/23 550/8 550/10 550/13 109 [3] 548/1 548/12 548/18 10th [2] 488/7 638/22 11 [8] 536/22 536/25 537/7 537/14 537/19 538/3 538/16 540/5 11/22/2021 [1] 641/25 1120 [1] 488/7 11:30 [1] 608/17 12 [4] 547/25 548/12 560/16 581/12 12 percent [1] 581/2 12:26 [1] 640/3 133,000 [1] 599/11 14 [4] 588/3 614/25	615/1 615/19 15 [6] 521/20 569/15 570/6 574/12 615/1 616/19 15100 [1] 489/5 16 percent [1] 614/4 16th [1] 523/16 17 [1] 599/13 1717 [3] 489/13 489/15 489/18 18 [7] 518/12 569/21 581/7 581/16 587/5 605/25 607/9 18-year-olds [1] 599/13 180 [3] 495/8 515/1 515/9 180-day [3] 495/1 495/4 495/6 19 [1] 555/10 1980s [1] 530/1 1989 [1] 536/24 1993 [1] 553/21 19th [1] 636/19 1:00 [1] 608/18 2 2 percent [1] 619/3 20 [7] 518/10 561/6 574/12 613/6 613/7 613/15 613/17 2000 [1] 553/23 20006 [3] 489/13 489/16 489/18 2002 [1] 553/25 2003 [1] 555/24 2004 [1] 555/25 20044 [2] 488/14 488/17 2006 [1] 519/23 2007 [1] 555/16 2011 [2] 569/22 603/18 2012 [4] 557/12 566/13 567/1 573/13 2013 [6] 517/7 517/7 519/20 520/3 522/11 524/9 2014 [7] 515/24 517/7 518/12 520/17 522/13 522/24 523/16 2015 [1] 603/18 2016 [5] 589/7 589/10 590/14 590/19 590/25 2017 [3] 582/10 582/11 619/17 2017-2018 [1] 558/14 2018 [2] 558/14 582/10 2020 [1] 587/7 2021 [6] 487/6 499/15 510/6 546/13 641/6 641/25 20s [2] 618/23 618/24 20th [1] 638/2 21 [10] 496/10 517/5 517/24 518/14 519/1 519/13 543/9 543/10 549/3 549/6 21-474 [1] 491/2 2130 [1] 489/23 21st [4] 496/12 496/17 496/22 497/1 22 [5] 518/14 519/1 523/15 617/11 617/15	223 [1] 535/4 224 [1] 535/4 22nd [2] 526/24 637/13 23 [5] 518/14 519/1 528/13 605/25 616/12 23 percent [1] 614/5 23-point [1] 616/13 25 [2] 570/6 587/5 25 percent [1] 618/25 26 [6] 554/6 554/7 554/13 554/16 554/20 575/18 27th [1] 520/17 3 3,000 [2] 581/7 581/15 3,001 [1] 581/6 30 [3] 538/6 603/3 607/9 30 percent [2] 581/13 619/1 300 [2] 581/15 601/13 32 [4] 622/9 622/14 622/16 622/18 320 [1] 489/10 33 [1] 629/18 34 [3] 524/16 527/25 528/4 35 [7] 515/2 515/12 546/22 546/25 637/25 638/1 639/15 36 [4] 493/3 515/2 515/12 535/17 360 [1] 581/15 38 [1] 602/5 38 percent [1] 616/22 39 [1] 569/21 4 4 percent [1] 617/22 40 [2] 570/6 615/22 40 percent [1] 603/3 405 [1] 489/23 41 [1] 627/13 4112 [1] 489/24 4128 [1] 488/8 43 percent [1] 617/20 431-4112 [1] 489/24 45th [1] 488/9 46 [1] 616/12 46 percent [1] 614/15 474 [1] 491/2 477 [1] 587/5 48 percent [3] 615/4 615/22 617/21 4800 [1] 489/10 4th [1] 520/3 5 5 percent [3] 580/24 581/1 581/1 50 [1] 616/1 50-18 [1] 518/12 50-20 [1] 518/10 50-some [1] 615/25 54 percent [1] 616/22 541 [1] 489/24 55 percent [2] 615/3 615/21 59 percent [1] 588/16
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